

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **June 11, 2002**

AGENDA ITEM NO.: **9**

CONSENT:

REGULAR: **X**

CLOSED SESSION:

ACTION: **X**

INFORMATION:

(Confidential)

ITEM TITLE: **Revision of Cable Television Ordinance**

RECOMMENDATION: That the current cable television (CATV) ordinance, Sections 12.1-1 through 12.1-46 of the Code of the City of Lynchburg, be repealed, and that an updated version, Sections 12.1-1 through 12.1-66, be adopted.

SUMMARY: It is recommended that the current CATV ordinance be updated to reflect changes in the CATV industry and regulatory environment, in preparation for the upcoming franchise renewal negotiations with the current franchisee. The CATV franchise of the current franchisee expires in March, 2003, and franchise negotiations are expected to take place in the second half of this year. A complete replacement of the ordinance is proposed, although much of the existing ordinance is retained. A summary of the significant changes was presented and discussed at City Council's Work Session on May 28, 2002.

PRIOR ACTION(S): N/A.

BUDGET IMPACT: None.

CONTACT(S): Mike Goetz 847-1341 x286

ATTACHMENT(S):

1. New Cable TV Ordinance, Sections 12.1-1 through 12.1-66 of the Code of the City of Lynchburg
2. Executive Summary – Cable TV Ordinance
3. Letter from Municipal Services Associates, Inc., regarding Cable TV Ordinance changes

REVIEWED BY:

## ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF LYNCHBURG, 1981, BY REPEALING SECTIONS 12.1-1 THROUGH 12.1-46 , AND TO AMEND THE CODE OF THE CITY OF LYNCHBURG BY ADDING THERETO NEW SECTIONS NUMBERED 12.1-1 THROUGH 12.1- 66, THE REPEALED AND THE NEW SECTIONS RELATING TO PROCEDURES FOR THE GRANTING OF CABLE TELEVISION FRANCHISES AND RENEWALS AND ESTABLISHING RULES AND REGULATIONS GOVERNING THE OPERATION OF CABLE TELEVISION SYSTEMS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended by a repealing Sections 12.1-1 through 12.1-46
2. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended by adding Sections 12.1-1 through 12.1- 66 as follows:

### **Sec. 12.1-1. Short title.**

This chapter shall be known and may be cited as the "City of Lynchburg Cable Communications Ordinance."

### **Sec. 12.1-2. Purposes.**

The council of the City of Lynchburg, pursuant to the authority granted to it by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and the Code of Virginia, 1950, as amended, has determined that it is in the best interest of and consistent with the convenience and necessity of the city to grant franchises to companies desiring to provide cable services within the confines of the city and on the terms and conditions hereinafter set forth , and as may be further described in each franchise agreement and has identified the purposes of this ordinance as follows:

- (a) To provide for the franchising and regulation of cable television systems within the City of Lynchburg; and
- (b) To provide a procedure for the granting of nonexclusive franchises for providing cable services in the city; and
- (c) To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of cable systems in, upon, along, across, above, over and under or in any manner connected with the streets, public ways, or public places within the jurisdiction of the city as now or in the future may exist; and
- (d) To provide for the payment of franchise fees based upon gross revenues and other valuable consideration for the costs associated with the use of municipal property, public streets, public ways, easements and other public lands, and to compensate the city for costs incidental to the award and implementation of any and all cable television franchises; and
- (e) To provide for the regulation under this ordinance by the city council of rates and fees charged by grantees as allowed by applicable law; and

(f) To provide conditions under which such franchised system or systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, the citizens, and general public of the city; and

(g) To provide policies which protect the city's infrastructure by requiring grantees who perform work or construct facilities in municipal rights-of-way to adhere to said policies; and

(h) To provide customer service standards and consumer protection provisions which protect the public welfare and public interest; and

(i) To provide remedies and prescribe penalties for violation of this ordinance and any franchise granted pursuant thereto.

### **Sec. 12.1-3. Definitions.**

For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.. The words "shall" and "will" are always mandatory and not merely directory. The word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) "Act" means the Cable Communications Policy Act of 1984 [P.L. 98-549], as amended by the Cable Television Consumer Protection and Competition Act of 1992 [P.L. 102-835] and the Telecommunications Act of 1996 [P.L. 104-104], now or hereafter amended.

(b) "Basic Cable Service" means all subscriber services provided by the grantee in one or more service tiers for an established regular monthly fee, which includes at a minimum the delivery of local broadcast stations, and public, educational and government access channels. Basic service does not include optional program and satellite service tiers, a la carte services, to the extent that such services are not basic cable service under FCC rules, per channel, per program, or auxiliary services for which a separate charge is made. However, grantee may include other satellite signals on the basic service tier.

(c) "Cable Communications Ordinance" means the City of Lynchburg Cable Communications Ordinance (see "Ordinance")

(d) "Cable Operator" means any person or persons, including but not limited to, corporations, partnerships, and joint ventures, who provide cable services through means of a cable system, or any person or persons who manage, control, coordinate, or direct the operations of a cable system. This definition shall include a multichannel video provider as defined herein below.

(e) "Cable Service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such programming or other programming service.

(f) "Cable System" or "System" or "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public right-of-way; (3 ) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the

Telecommunications Act of 1996, except that such facility shall be considered a cable system (other than for purposes of Section 621 (c) of the Cable Act) to the extent that such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Telecommunications Act of 1996 (P.L. 104-104) ; or (5) any facilities of any electric utility used solely for operating its electric utility services.

(g) “Cablecasting” means the programming carried on a cable system, exclusive of broadcast signals, whether originated by the cable operator or any other party.

(h) “Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

(i) “City” means the City of Lynchburg, Virginia, a municipal corporation in the Commonwealth of Virginia in its present incorporated form or as it may be changed by annexation, reorganization, consolidation, or reconsolidation.

(j) “City Manager” means the city manager of Lynchburg Virginia, or his or her designee.

(k) “City Council or Council” means the governing body of the City of Lynchburg.

(l) “Complaint” means any written or verbal communication from any person, by telephone, or by electronic mail, from any individual, business, unit of government, or institution to the franchising authority regarding a matter or matters pertaining to the service or other function of the cable system or the franchise.

(m) “Construction”. The terms “completion of construction”, “complete system construction”, “satisfactorily complete”, and “fully activated” shall mean that strand has been erected and all necessary cable (including trunk and feeder cable) has been lashed, or for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all nodes, amplifier housings and modules have been installed (including modules for return path signals); that power supplies have been installed and all bonding and grounding has been completed; that all necessary connectors, splitters, and taps have been installed; that construction of any headends or hubs have been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to deliver cable services to subscribers has been completed. Construction shall also mean that proof-of-performance tests shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire system will be activated and proofed when completed. Construction of any segment or of the entire system will not be considered complete until proof-of-performance tests have been conducted on such segment (or in the case of the entire system, on all segments of the cable system) and any problems found during testing have been corrected. The term “completion of construction” does not include marketing and installation of subscriber service.

(n) “Control” or “Controlling Interest” means actual working control or ownership of a system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of 5 percent or more of a cable system or the franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of

the system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or group of persons.

(o) “Converter” means an electronic device provided by the grantee to subscribers for the purpose of decoding digital signals or changing the frequency of midband, superband, or hyperband signals to a suitable channel or channels which the television receiver is able to deliver at designated dial locations.

(p) “Dedicate” shall mean to make available channel space or equipment for exclusive use of the designated user, subject to the authority of the city council to authorize reassignments of channels.

(q) “Dwelling Unit” means a single-family or multi-family residential place of occupancy or business place of occupancy.

(r) “Educational Access Channel” means a non-commercial educational access channel or channels set aside and so designated for the use of schools and related educational institutions.

(s) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(t) “Franchise” means the non-exclusive, revocable rights granted hereunder, or as described in a franchise agreement entered into between the city and a grantee, to own, operate, construct, reconstruct, upgrade, dismantle, test, and use a cable system along the public streets and public ways in the city, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the city as may be required by other ordinances and laws of the city.

(u) “Franchise Agreement” means that certain written agreement entered into between a grantee and the city wherein the franchise and the terms thereof are conferred on the grantee.

(v) “Franchise Area” means that portion of the city for which a franchise is granted under the authority of a franchise agreement. If not otherwise stated in a franchise agreement, the franchise area shall be the corporate limits of the City of Lynchburg including all territory thereafter annexed to the city.

(w) “Franchise Fee” means any assessment imposed herein by the city on a grantee solely because of its status as a grantee. The term “franchise fee” does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed upon both utilities and cable operators or their services) but not including a tax, fee, or assessment which is unduly discriminatory against the grantee or cable subscribers; capital costs which are required by the franchise to be incurred by grantee for the establishment of and operation of public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages; or any fee imposed under Title 17, U.S. Code.

(x) “Franchising Authority” means the corporate authorities of the City of Lynchburg.

(y) “Government Access Channel” means a non-commercial channel or channels set aside and so designated for the use of units of local government.

(z) “Grantee” means any person or persons, including corporations, limited liability companies, partnerships, associations, joint ventures, or organizations of any type granted a franchise hereunder, and its agents, employees, subsidiaries, assignees, transferees, or lawful successors.

(aa) “Grantor” means the City of Lynchburg.

(bb) “Gross Revenues” means any and all cash, credits, property, or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by the grantee, its affiliates, or by any other entity that is a cable operator of the cable system, from the operation of the grantee’s cable system (including the studios and other facilities associated therewith) to provide cable services. Gross revenues shall be calculated and reported based on generally accepted accounting principles (GAAP). Gross revenues include, by way of illustration and not limitation, monthly fees charged to subscribers for any basic, optional, premium, per-channel, per-program service or cable programming service; installation, disconnection, reconnection, and change-in-service fees; leased access channel fees and any other fees from lease or license of the cable system for cable services; late fees and administrative fees; revenues from rentals or sales of converters, cable modems, or other equipment; studio rental, production equipment, and personnel fees for programming carried on the cable system; advertising revenues; revenues from program guides; revenues from home shopping and bank-at-home channels; and (unless otherwise precluded by applicable law) revenues from internet services provided using the cable system. Gross revenues shall include an allocated portion of any revenue derived by the grantee or its affiliates pursuant to any regional, national, or international compensation arrangement for any service or activity derived from the operation of the cable system in the franchise area, e.g. advertising. Such an allocation shall be based on the number of subscribers relevant to such regional or national arrangements. Gross revenues shall not include any bad debt, provided, however, that all or any part of any such actual bad debt that is written off but subsequently collected shall be included in Gross revenues in the period collected. Gross revenues shall not include any taxes on services furnished by the grantee which are imposed directly on any subscriber or user by the Commonwealth of Virginia, franchising authority, or other governmental unit. A franchise fee is not such a tax. Gross revenues shall exclude any net amount actually paid by the grantee to a programmer for pay or premium channels (i.e. video programming offered on a per-channel or per-program basis as those terms are applied in federal law).

(cc) “Headend” means the control center of a cable system, where incoming signals are amplified, converted, processed, and combined into a common cable along with any origination cable casting, for transmission to subscribers. Headend usually includes antennas, preamplifiers, frequency converters, demodulators, processors, servers, and other related equipment.

(dd) “Initial activation of service” or “Initially providing Cable Service” means with respect to a particular segment, group of segments, or the entire cable system, as the case may be, that all proposed services and system capabilities as stated in a proposal by a cable operator are available and/or in place, construction has been completed (see definition of construction) and the completed segment or segments in question or the entire cable system, has been activated.

(ee) “Installation” means the connection of the system from subscriber drop cables to subscribers’ terminals.

(ff) “Leased Access Channel” means a cable television channel or channels or parts thereof designated for cable casting which is provided by means of a lease arrangement for cablecast air time between the cable operator and the lessee. Shall include without limitations all use pursuant to Section 612 of the Act (47 U.S.C. §532).

(gg) "Local Origination Programming" means programming locally produced by the cable operator.

(hh) "Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

(ii) "Multichannel Video Provider" means any system, including a satellite master antenna television system (SMATV) that is not a traditional cable system distributing video programming of its own or from third parties to subscribers which uses all or part of the city's public streets or public ways, including rights-of-way, in order to distribute such video programming or which distributes such video programming to subscribers over the lines of a common carrier which are located in all or part of the city's public streets or public ways.

(jj) "Normal Business Hours" means those hours during which businesses are normally open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week, and some weekend hours.

(kk) "Normal Operating Conditions" means those service conditions that are within the control of the grantee. Normal operating conditions includes those conditions which are ordinarily under the control of the grantee including, but not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system. Normal operating conditions excludes those conditions which are not within the control of grantee, including, but not limited to, natural disasters, civil disturbance, power outages, telephone network outages, and severe or unusual weather conditions.

(ll) "Ordinance" means the City of Lynchburg Cable Communications Ordinance as may be amended from time to time.

(mm) "Outage" means the reporting by two (2) or more subscribers served by the same trunk, node site, or feeder line, of the complete loss of video, audio, or both for a period of fifteen (15) minutes or more.

(nn) "Person" means any individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(oo) "Proposal" or "Application" means a formal response by a qualified cable company to a specific invitation by the city asking for proposals in accordance with city specifications to provide cable services to residents, businesses, industries, and institutions within the city.

(pp) "Public Access Channel" means a cable television channel or channels specifically designated as a channel or channels available to the public for the production of non-commercial programming as subject to applicable law.

(qq) "Public Way" means, except where expressly limited by this chapter or a franchise and, in any event, only to the extent necessary to permit the installation and maintenance of a cable system, the surface, the air space above the surface, and the area below the surface of any public driveway, conduit, tunnel, park, parkway, square, waterway, utility easement or other public right-of-way now or hereafter held by, or dedicated to, the city. No reference herein to the public way shall be deemed to be a representation or guarantee by the city that its title or interest in any property is sufficient to permit its use for such purpose, and a grantee shall, by the use of such

term, be deemed to gain only such rights to use property in the city as the city may have the right and power to give.

(rr) “Service Call” means grantee’s on-site visits to a subscriber’s residence regarding cable service.

(ss) “Service Interruption” means the loss of either picture or sound or both for any channel for single or multiple subscriber(s).

(tt) “Street” means the surface, the air space above the surface, and the area below the surface of any public street, road, highway, lane, path, alley, sidewalk, boulevard, drive, or bridge, now or hereafter held by the city. No reference herein, or in any franchise, to the public street shall be deemed to be a representation or a guarantee by the city that its title or interest to any property is sufficient to permit its use for such purpose, and a grantee shall, by the use of such terms, be deemed to gain only such rights to use property in the city as the city may have the undisputed right and power to give.

(uu) “Subscriber” means any person who legally receives one or more of the services provided by a Grantee’s Cable System, and does not further distribute such services.

(vv) “Subscriber Drop” means a cable which connects the tap of a feeder cable to a ground block at the subscriber’s premises.

(ww) “User” means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

(xx) The terms “Will be available”, “Will be equipped”, “Will use”, “Will perform”, “Will be utilized”, “Will permit”, “Allow”, “Will be activated”, “Will be initially connected”, “Will be capable”, “Will provide”, “Will include”, “Will employ”, “Will be established”, “Will be able”, “Will be implemented”, “Will be delivered”, “Will utilize”, and other similar uses of terms in a cable operator’s proposal denoting the activation of cable service or the delivery of equipment, facilities, or services shall be interpreted to mean delivery or accomplishment at a date no later than the Initial activation of service (as defined in this section) unless otherwise expressly and clearly stated or qualified in the cable operator’s proposal to mean a more specific or different time.

#### **Sec. 12.1-4. Applications for franchise.**

(a) Content. Each application for a new Franchise to construct, operate, or maintain any Cable System in the City of Lynchburg shall be filed with the Clerk of Council to include, but not be limited to, the following information:

(1) The name and address, telephone number and fax number, and e-mail and website addresses of the applicant;

(2) A detailed statement of the corporate or business entity organization of the applicant, including, but not limited to, the following and to whatever extent required by the City:

a. The names, residence, and business address of all officers, directors, and partners of the applicant;



- b. The names and business addresses of all officers, Persons, and entities holding a plurality or majority of shares of ownership in the applicant and the respective ownership share of each such Person or entity;
- c. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by the applicant and a statement describing the nature of any such parent or subsidiary business entity including, but not limited to, Cable Systems owned or controlled by the applicant, its parent and subsidiary, and the areas served thereby;
- d. A detailed description of all previous experience of the applicant in providing cable television system service, and in similar or related fields, including broadband service, and resumes of management and key technical personnel who will be responsible for the day-to-day operation of the Cable System;
- e. A detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the City Council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed Cable System in the City, or a statement from an independent certified public accountant certifying that the applicant has available sufficient, free, net, and uncommitted cash resources to construct and operate the proposed Cable System in the City;
- f. A detailed financial plan (pro forma) describing for each year of the Franchise the projected number of Subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and a sources and uses of funds statement. All information is to be presented in the format required by the City;
- g. A statement identifying, by place and date, any other Cable System Franchises awarded to the applicant, its parent, or subsidiary; the status of said Franchises with respect to completion thereof; the total cost of completion of such Franchised systems; and the amount of applicant's and its parent's or subsidiary's resources committed to completion of the Cable System(s).
- h. Initial applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.
- i. Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to, the following:
  - 1. Locations of all other Franchises and the dates of award for each location; and
  - 2. Estimated construction costs and estimated completion dates for each System; and
  - 3. Estimated number of miles of construction and number of miles completed in each System as of the date of this application; and
  - 4. Date for completion of construction as promised in the application for each System.

j. Initial applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other Cable Systems, including, but not limited to, the following:

1. Location of other Franchise applications and date of application for each System; and
2. Estimated dates of Franchise awards; and
3. Estimated number of miles of construction; and
4. Estimated construction costs.

k. Initial applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any Person with respect to the Franchise and the proposed Cable System. The Grantee of a Franchise shall disclose all other contracts to the City as the contracts are made. This Section shall include, but not be limited to, any agreements between local applicants and national companies.

(3) A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

- a. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served;
- b. A statement or schedule setting forth all proposed classifications of rates and charges to be made to Subscribers, and all rates and charges for Installation and for various services;
- c. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant;
- d. A copy of the form of any service agreement, or other instrument proposed to be entered into between the applicant and any Subscriber;
- e. A detailed statement setting forth in its entirety any and all agreements, whether formal or informal, written, oral, or implied, existing or proposed to exist, between the applicant and any Person which materially relate, pertain to, or depend upon the application and the granting of the Franchise.

(4) A copy of any agreement covering the Franchise Area, if existing, between the applicant and any municipal utility or public utility subject to regulation by the Virginia State Corporation Commission providing for the use of any facilities of the public utility, including, but not limited to, poles, lines, or conduits.

(5) A statement indicating whether or not the applicant as an entity, or any of its officers or directors have been the subject of a federal, state, or local investigation which resulted in indictment or conviction, the date and location of such investigation, and the outcome of such investigation.

(6) Any other details, statements, information or references pertinent to the subject matter of such application which shall be requested by the Council, or by any other provision of law.

### **Sec. 12.1-5. Applicants' bids for initial franchise.**

(a) After receiving applications for a Franchise, the City Council, after considering financial, technical, and programming proposals, and the legal and character qualifications of the applicant, may, by ordinance, grant one (1) or more non-exclusive Franchises creating a right to construct and operate a Cable System within the Streets and Public Ways of the City. No provision of this Ordinance shall be deemed or construed to require the City Council to grant a Franchise.

(b) The application for a cable television Franchise shall be submitted to the City Council or its designee, on a written application in the form specified in the manner detailed in Section 12.1-4 above based upon a Request For Proposal (RFP) furnished by the City, and in accordance with procedures and schedules to be established by the City. The application form may request facts and information the City deems appropriate; upon receipt by the City Council or its designee, such facts and information shall be deemed public records. Applicants shall pay a non-refundable fee of no less than five thousand dollars (\$5,000.00) by certified or cashier's check made payable to the City of Lynchburg. No proposal for a Franchise shall be considered without receipt of said check.

(c) All checks received will be deposited to an account of the City and will serve to recover all expenses incurred by the City in the preparation and granting of a Franchise, including, but not limited to the costs of administrative and legal staff time, additional consulting and engineering expertise, and publication costs incurred with the processing, evaluation, and preparation of documents relating to the Franchise.

(d) In the event that expenses exceed the total amount of filing fees collected from the applicants, an applicant awarded a Franchise shall pay to the City the excess amount not to exceed fifty thousand dollars (\$50,000.00).

### **Sec. 12.1-6. Selection of grantee.**

(a) Solicitation of Proposals. The Council may, by advertisement or any other means, solicit and call for applications for Cable System Franchises and may determine and fix the date upon or after which the same shall be received by the City, or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such applications. The terms and conditions for application shall be described in the Request For Proposal (RFP) document.

(b) Compliance With City Requirement. Any Person submitting a Proposal for a Cable System in response to the City's RFP document shall provide all information required by this Section and all other information requested by the City's RFP document or otherwise required by the City and the Commonwealth of Virginia. Each Proposal shall be responsive to the questions soliciting the information and shall completely, accurately, and materially supply all of the information so solicited. Any misrepresentation, failure, neglect, or refusal to provide any of such information may, at the option of the City, render a Proposal invalid. The requested information must be complete and verified as true by the applicant.

(c) All questions regarding the meaning or intent of this Section or application documents shall be submitted to the City Manager in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the City as having received the application documents. The City reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the deadline date for the application will not be answered. Only replies to questions by written addenda will be binding. All applications must contain an acknowledgment of receipt of all addenda.

(d) Applications must be sealed, and submitted at the time and place indicated in the Request For Proposal. No Application shall be opened or inspected prior to the deadline for applications. All Proposals received by the City shall become the sole property of the City.

(e) Before submitting an application, an applicant shall be solely responsible for and must:

1. Examine this Ordinance and the RFP documents thoroughly; and
2. Familiarize himself/herself with local conditions that may in any manner affect performance under the Franchise, including, but in no event limited to, community and institutional cable-related needs, relevant demographics, topographics, pole attachment policies of appropriate utility authorities, undergrounding policies and subscriber desires;
3. Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise; and
4. Carefully correlate the application with the requirements of this Ordinance and the RFP documents.

(f) Referral to City Manager. Upon receipt of any application for Franchise, the Council shall refer the same to the City Manager who shall prepare or cause to be prepared a report, including recommendations respecting such application, and file the report with the Council. The City will evaluate all Proposals that have complied with its requirements. All applicants that have met the City's qualifications in the RFP documents and have submitted Proposals on the required forms will be offered the opportunity to make a formal presentation to the Council in support of their applications.

(g) Investigations. The City may make such investigations as it deems necessary to determine the ability of an applicant to perform under the Franchise, and the applicant shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any application if the evidence submitted by, or investigation of, such applicant fails to satisfy the City that such applicant is properly qualified to carry out the obligations of the Franchise Agreement, comply with the provisions of this Chapter, or to satisfactorily construct and operate the Cable System, and to complete the work contemplated therein. Conditional applications will not be accepted.

(h) Rejection. The City may reject any and all applications from whatever source and whenever received and the City also reserves the right to waive all formalities where the best interest of the City may be served, and may, if it so desires, request new or additional Proposals.

(i) Public Comment. If, upon receiving the City Manager's report, the Council shall determine to further consider the applications, it shall set a public hearing for the consideration of applications; fixing and setting forth a day, hour, and place when and where any Persons having interest therein or objections may file written comments and appear before the Council and be heard.

(j) Consideration. In making any determination hereunder as to any application for a new Franchise, the Council may consider factors including, but not limited to, the financial, legal, and technical qualifications of the applicant, the quality of service proposed, rates to be charged to Subscribers, income to the City, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness, and ability to meet construction and physical requirements, ability to meet all requirements set forth in this Chapter, and to abide by all purpose and policy

considerations, Franchise limitations and requirements, and any other considerations deemed pertinent by the Council for safeguarding the interests of the City and the public.

(k) Determination. At the time set for the hearing, or at any adjournment thereof, the Council shall proceed to hear all comments, and to read all written comments into the public record. Thereafter, the Council shall make one (1) of the following determinations:

1. That such application be granted and the terms of conditions thereof; or
2. That such application be denied, which determination shall be final and conclusive.

No provision of this Chapter shall be deemed or construed so as to require the granting of a Franchise when, in the opinion of the Council, it is in the public interest to restrict the number of Grantees to one (1) or more.

(l) Additional Information. The Council may at any time demand and applicants shall provide such supplementary, additional, or other information as the Council may deem reasonably necessary to determine whether the requested Franchise should be granted.

(m) Awards Based on Merit. It is the intention of the City to award any cable Franchise on the basis of merit of Proposals. To this end, any communications with the City Council by those wishing to submit Proposals for a cable Franchise should be limited to public sessions. Proposals will not be evaluated on the basis of ownership by individuals, institutions, and community agencies in corporations submitting cable Franchise Proposals.

(n) Finality of Council Decision. Any decision of the City Council concerning selection of a Grantee pursuant to this Chapter shall be final.

#### **Sec. 12.1-7. Grant of authority.**

(a) Any cable television Franchise granted by the City shall grant to the Grantee the right and privilege to erect, construct, operate, and maintain in, upon, along, across, above, over, and under the Streets and Public Ways now in existence and as may be created or established during its terms any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System, but only in strict compliance with the provisions of such Franchise and this Ordinance.

(b) Any privilege claimed under such Franchise by the Grantee in any Street, Public Way or other public property shall be subordinate to any prior lawful occupancy of the Streets, Public Ways, or other public property.

(c) This grant of authority does not authorize, and shall not be construed, interpreted, or applied to authorize, the use of the Cable System for telecommunications services as defined by the Act.

(d) Pursuant to Section 35-24 of the Lynchburg City Code, no corporation, association, Person, partnership, or any other entity, whether public or private, profit or not-for-profit, shall construct, operate, expand, or maintain a Cable System which has the purpose of transmitting or receiving voice, data, video, or image signals in any of the City's Streets, alleys, public grounds or public rights-of-way without first obtaining a Franchise from the Lynchburg City Council.

(e) Pursuant to Section 35-24 of the Lynchburg City Code, No corporation, association, Person, partnership, or any other entity which currently has a Franchise from the City to maintain cable television in the City's Streets, alleys, public grounds, or other public rights-of-way shall expand, sell, lease, or transfer their equipment and facilities to include any of the activities listed in

subsection (d) hereinabove without first obtaining a modification of their existing Franchise from the City specifically permitting such activities.

(f) The right of the Grantee to use and occupy the Streets or Public Ways shall not be exclusive. The City reserves the right to grant any right or use of such Streets or Public Ways to any Person at any time during the term of the Franchise or any other Franchise subsequently granted to any other Person.

**Sec. 12.1-8. Agreement and incorporation of application by reference.**

(a) The execution of a Franchise Agreement by the Grantee shall be agreement and acknowledgment of the Grantee to be bound by all the terms and conditions contained in this Ordinance.

(b) Where a Grantee has submitted an application in order to receive a Franchise, the Grantee shall provide all services specifically set forth in its application (or as modified by a Franchise Agreement) and shall provide Cable Service within the confines of the City of Lynchburg; and by its acceptance of the Franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the Franchise.

**Sec. 12.1-9. Franchise renewal.**

(a) Franchise Renewal:

1. During the six (6) month period which begins with the thirty-sixth (36th) month before the Franchise expiration, the City may on its own initiative and shall at the request of the Grantee, commence proceedings which afford the public appropriate notice and participation for the purpose of:

- a. Identifying the future cable-related community needs and interests; and
- b. Reviewing the performance of the Grantee under the Franchise during the then current Franchise term.

2. Submission of Renewal Proposal

- a. Upon completion of a proceeding under Subsection (1) of this Section, the Grantee seeking renewal of a Franchise may, on its own initiative or at the request of the City, submit a Proposal for renewal.
- b. Any such Proposal shall contain such material as the City may require, including Proposals for an upgrade of the Cable System.
- c. The City may establish a date by which such Proposal shall be submitted.

3. Decision to Renew or Not Renew Franchise

- a. Upon submittal by the Grantee of a Proposal to the City for the renewal of the Franchise, the City shall provide public notice of such Proposal and, during the four (4) month period which begins of the completion of any proceedings under Subsection (1) of this Section, renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed and, at the request of the Grantee or on its own initiative, the City Manager shall select a hearing officer who shall commence an administrative proceeding after providing prompt public notice of such proceeding, in accordance with paragraph (3)b of this Section to consider whether:

(1) The Grantee has substantially complied with the material terms of the existing Franchise and with applicable law;

(2) The quality of the Grantee's service, including signal quality, response to customer Complaints and billing practices, but without regard to the mix or quality of Cable Services or other services provided over the system, has been reasonable in light of community needs;

(3) The Grantee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the Grantee's Proposal; and

(4) The Grantee's Proposal is reasonable to meet the future cable-related community needs and interests taking into account the cost of meeting such needs and interests.

b. In any proceeding under paragraph 3.a. of this Section, the Grantee shall be afforded adequate notice and the Grantee and the City, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under Subsection (1) of this Section), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

c. The administrative hearing officer will make the findings of fact required by 47 U.S.C. §546(c)(1) and Subsections 12.1-9(b)3.a. and b. of this Section within sixty (60) days of said proceeding and promptly submit these findings to the clerk of Council.

d. Upon receipt of the findings of fact, the City Council shall issue a written decision granting or denying the Proposal for renewal based upon said findings of fact, and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefor.

4. Any denial of a proposal for renewal shall be based on one (1) or more adverse findings made with respect to the factors described in Subparagraphs (1) through (4) of Subsection 3.a. of this Section, pursuant to the record of the proceeding under Subsection 3. of this Section. The City may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under Subsection 3.a.(1). of this Section or on events considered under Subsection 3.a.(2) of this Section in any case in which a violation of the Franchise or the events considered under Subsection 3.a.(2) of this Section occur after the effective date of the Cable Communications Policy Act of 1984 (December 29, 1984), unless the City has provided the Grantee with notice and the opportunity to cure, or in any case in which it is documented that the City has waived its right to object or the Grantee gives written notice of a failure or inability to cure, and the City fails to object within a reasonable time after receipt of such notice.

5. If the Grantee's Proposal for renewal has been denied by a final decision of the City made pursuant to this Section, or has been adversely affected by a failure of the City to act in accordance with the procedural requirements of this Section, the Grantee may appeal such final decision or failure pursuant to the provisions of 47 U.S.C. §555.

a. In the event that a court of competent jurisdiction finds that:

(1) Any action of the city, other than harmless error, is not in compliance with the procedural requirements of this Section; or

(2) In the event of a final decision of the City denying the renewal Proposal, the Grantee has demonstrated that the adverse finding of the City with respect to each of the factors described in Subparagraphs (1) through (4) of Subsection 3.a. of this Section on which the denial is based is

not supported by a preponderance of the evidence, based on the record of the proceeding conducted under paragraph 3.a. of this Section.

6. Any decision of the City on a Proposal for renewal shall not be considered final unless all administrative review by the Commonwealth of Virginia has occurred or the opportunity therefor has lapsed.

7. For the purposes of this Section, the term “Franchise expiration” means the date of the expiration of the term of the Franchise, as provided under the Franchise, as it was in effect on the date of the enactment of the Cable Communications Policy Act of 1984 (December 29, 1984).

8. Notwithstanding the provisions of Subsections 1. through 7. of this Section, the Grantee may submit a Proposal for the renewal of the Franchise pursuant to this Subsection at any time, and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such Proposal at any time (including after proceedings pursuant to this Section have commenced). The provisions of Subsections 1. through 7. of this Section shall not apply to a decision to grant or deny a Proposal under this Subsection. The denial of a renewal pursuant to this Subsection shall not affect action on a renewal Proposal that is submitted in accordance with Subsections 1. through 7.

9. Notwithstanding the provisions of Subsections 1. through 8., any lawful action to revoke a Grantee’s Franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the Grantee under this Section.

#### **Sec. 12.1-10. Franchise area.**

Each Franchise shall be for the present territorial area of the City, including all territory thereafter annexed to the City during the term of a Franchise.

#### **Sec. 12.1-11. Full force and effect of franchise; non-exclusivity of franchise.**

Any Franchise and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the signing of a Franchise Agreement by the City, as provided by law, and shall continue in force and effect for the term of a Franchise Agreement; provided, however, that such Franchise shall have no force or effect and shall be null and void except only if the Grantee, within thirty (30) days after the date of City approval of the Franchise, shall file with the City its unconditional acceptance of the Franchise and promise to comply with and abide by all of its provisions, terms and conditions and the provisions of this Ordinance. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the Grantee before a notary public. Such Franchise shall be non-exclusive and revocable.

#### **Sec. 12.1-12. Service Availability and Record Request**

The Grantee shall provide Cable Service throughout the entire Franchise Area pursuant to the provisions of this Ordinance and the Franchise and shall keep a record for at least five (5) years of all requests for service received by the Grantee. Requests for service shall include telephone and written requests for Installations, including new Cable Service, disconnections, and repairs. This record shall be available for inspection by the City, or its designee, at the local office of the Grantee City during regular office hours.



### **Sec. 12.1-13. Availability of books and records.**

(a) The Grantee shall fully cooperate in making available at reasonable times, and the City shall have the right to inspect, where reasonably necessary for the enforcement of the Franchise, books, records, maps, plans and other like materials of the Grantee applicable to the Cable System, at any time during normal business hours; provided where volume and convenience necessitate, the Grantee may require inspection to take place on the Grantee premises.

(b) Where Grantee is unable to locate books or records specific to the Franchise Area at a location in the City of Lynchburg, Grantee may maintain such books and records at a remote location with the provision that in the event that the City or its designee requests to inspect such records, Grantee shall permit the inspection of such records within fourteen (14) days of such request.

(c) The following records and/or reports shall be sent to the City, but no more frequently than on a quarterly basis if so mutually agreed upon by the Grantee and the City:

1. A monthly Cable Services Profile covering the Franchise Area. The Cable Services Profile shall include number of phone calls answered, the percentage of phone calls answered within 30 seconds, the abandonment rate of telephone calls, the number of Subscriber Installations and disconnections, the total number of homes passed by Cable System plant, the number of basic, expanded service, and digital customers, the number of cable modem customers, and the number of service interruptions, the cause of the service interruptions, the number of Subscribers affected by the service interruption, and the time necessary for the resolution of the service interruption. The profile shall also contain a maintenance profile which indicates the number of bad taps, damaged cable incidents, and failure of fittings, along with the total number of plant system mileage and a plant mileage check for leakage.

2. A report for all temporary Subscriber Drops installed, which includes the location, date of installation, and date of burial.

3. Periodic preventive maintenance reports.

4. Actionable, written Subscriber inquiry/Complaint resolution data and the right to review documentation concerning these inquiries and/or Complaints on an aggregate basis with respect for federal Subscriber privacy legislation periodically.

5. During the reconstruction or upgrading of a substantial portion or all of the Cable System in the City, periodic construction update reports.

(d) The following records may be reviewed upon request by the City:

1. Any copies of FCC Form 395-A ( or successor form) or any supplemental forms related to equal opportunity or fair contracting policies; and

2. Any other additional information as the City may reasonably require from time to time provided that such requests pertain to regulatory matters involving the enforcement of this Ordinance, other applicable ordinances of the City, or the Franchise Agreement.

### **Sec. 12.1-14. Cable system construction.**

(a) Maps and Schedules -- Construction and Reconstruction of Cable System

1. Map and plan. Within ninety (90) days of the grant of a Franchise, a Grantee shall submit a construction plan or reconstruction plan which shall be incorporated by reference and made a part of the Franchise Agreement and shall be enforceable as to the Grantee under the provisions of this Ordinance. The plan shall include system design details, equipment descriptions, and design performance information. The plan and schedule shall be updated whenever substantial changes become necessary. The plan shall also include a map of the entire Franchise Area and shall clearly delineate the following:

a. The areas within the Franchise Area where the Cable System will be initially available to Subscribers, including a schedule of construction or reconstruction for each year that construction or reconstruction is proposed, and;

b. The areas within the Franchise Area where extension of the Cable System cannot reasonably be done due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

2. Early construction and time extension. Nothing in this Section shall prevent a Grantee from constructing or reconstructing the Cable System earlier than planned. However, any delay in the system construction beyond the times specified in the plan report timetable shall require application to and consent by the Council.

3. Delay in construction timetable. Any delay beyond the terms of construction or reconstruction timetable, unless approved by the Council, will be considered a violation of this Chapter for which the provisions of either Sections 12.1-38 or 12.1-40 shall apply, as determined by Council.

4. Commencement of construction or reconstruction. Construction or reconstruction in accordance with the plan submitted by a Grantee shall commence as soon as is reasonably possible. Prior to construction or reconstruction, a Grantee shall obtain all necessary federal, state, and local licenses, permits, and authorizations required for the construction or reconstruction. Failure to pursue all necessary steps to secure the aforementioned authorizations with due diligence shall constitute a violation of this Chapter. Furthermore, failure to proceed expeditiously shall be presumed in the event construction or reconstruction is not commenced within twelve (12) months of the grant and acceptance of the Franchise.

5. Reports to Council. Every two (2) months after the start of construction or reconstruction, or more frequently if requested by the City, the Grantee shall furnish the City Council a report on progress of construction until complete. The report shall include a map that clearly defines the areas wherein Cable Service to Subscribers is available.

6. New construction timetable.

a. Within two (2) years from the date of the award of an initial Franchise, the Grantee must make Cable Television Service available to every Dwelling Unit within the Franchise Area.

b. The Grantee must make Cable Television Service available to at least 20 percent (20%) of the Dwelling Units within the Franchise Area within six (6) months from the date of the award of the Franchise.

c. The Grantee must make Cable Television Service available to at least 50 percent (50%) of the Dwelling Units within the Franchise Area within one (1) year from the date of the award of the Franchise.

7. In special circumstances and for good cause shown by the Grantee, the City, in the exercise of its sole discretion, may waive 100 percent (100%) completion within the two-year time frame,

provided that substantial completion is accomplished within the allotted time frame, substantial completion to be not less than 95 percent (95%). Justification for less than 100 percent (100%) must be submitted subject to the approval of the City.

8. Additional mandatory extension. Extension of the Cable System into any areas not specifically treated in the plan shall nonetheless be required if the terms of any of the following conditions are met:

a. Mandatory extension rule. A Grantee shall extend the Cable System upon request to any contiguous area not designated for initial service in the plan when potential Subscribers can be served by extension of the Cable System past Dwelling Units equivalent to a density of thirty-five (35) per street mile for aerial cable or underground cable serving single-family Dwelling Units, or fifty (50) homes per street mile for underground cable serving multi-family Dwelling Units. Extension hereunder shall be at a Grantee's cost. If undergrounding is required by regulation, a Grantee must make installation at its expense. Where aerial extension is allowed by regulation, but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

b. Early extension. In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of three (3) or more potential Subscribers desiring service, an estimate of the Grantee's costs required to extend service to the Subscribers. The Grantee shall then extend service upon request of the potential Subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. In the event the area subsequently reaches the density required for mandatory extension, such payments shall be consideration for early extension.

c. Standard extension. A Grantee shall extend and make Cable Service available to any isolated resident outside the initial service area, but inside the Franchise Area boundaries requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred twenty-five (125) foot drop line.

d. Special agreements. Nothing herein shall be construed to prevent a Grantee from serving areas under this Section under agreement with developers, property owners or residents.

(b) New Development Undergrounding.

1. All installations shall be underground in those areas of the City where utilities providing both telephone and electric service are underground, except as otherwise specifically approved in advance by the City. In areas where either telephone or electric facilities are aboveground at the time of installation, a Grantee may install its service aboveground, provided that at such time those facilities are required to be placed underground by the City or are placed underground, a Grantee shall likewise place its services underground without additional cost to the City or to the individual Subscriber so served within the City.

Where not otherwise required to be placed underground by this Ordinance, a Grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over aerial location shall be borne by the property owner making the request. Such underground installation shall be constructed to the maximum extent with the then existing technology and in accordance with all City codes, ordinances, and Code of Virginia statutes.

a. A Grantee shall coordinate the installation of underground equipment and apparatus simultaneously with telephone and electric conduit whenever the same are installed within the Grantee's area.

2. In cases of new construction or property development where utilities are to be placed underground, the developer and/or property owner shall give a Grantee reasonable notice of such construction or development, and of the particular date on which open trenching is available for the Grantee's conduit and/or cable, and related pedestals, vaults, and laterals. (the "Notice"). The Grantee shall provide, to the developer or property owner and to the City, the specifications for its trenching and the Grantee shall install its conduit, pedestals and vaults, and laterals within seventy-two (72) hours after the trenches first become available to the Grantee for such work, unless weather conditions prohibit such trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; provided, however, that if the Grantee fails to install its conduit, pedestals and vaults, and laterals within said seventy-two (72) hours, then the cost of any new trenching, and easements if necessary, shall be borne by the Grantee. Except for the notice of the particular date on which trenching will be available to a Grantee, the Notice may be given to the Grantee at the address stated in the Franchise Agreement or to the local general manager or system engineer of the Grantee prior to approval of the preliminary plat request. Written notice, by letter, fax transmission, or electronic mail from the developer, property owner, or City shall be sufficient to qualify as the Notice.

3. Underground drops exceeding one hundred twenty-five (125) feet. All areas subject to underground construction shall require all underground drop installations of not more than one hundred twenty-five (125) feet to be at the cost of the Grantee. Connections in excess of one hundred twenty-five feet shall be at the expense of a Subscriber at the Grantee's actual cost.

4. A Grantee shall be bound by any rule, restrictive covenant or other regulations of any subdivision, residential area, or restricted area, or by any ordinance of the City whether now or hereafter enacted, requiring utility lines to be placed underground.

5. In order that the provisions of this Section may be reasonably applied in instances where extreme or unnecessary hardship would result from carrying out the provisions of this Section, the Council shall have the power to vary the mandatory provisions of this Section in any specific case in such a manner that substantial justice is done upon a showing by the Grantee of good cause therefor.

#### **Sec. 12.1-15. Location of property of grantee.**

(a) Any wires, cable lines, conduits or other properties of a Grantee to be constructed, reconstructed, or installed in Streets or Public Ways shall be so constructed or installed only at such locations and in such manner as shall be approved by the Director of Public Works acting in the exercise of reasonable discretion.

(b) A Grantee shall not install any facilities or apparatus in or on other public property, places, easements, or rights-of-way or within any privately owned area within the City which has not yet become a public Street on any tentative subdivision map approved by the City, except those installed in or on public utility facilities now existing, without obtaining the prior written approval of the Director of Public Works.

1. If a private property owner elects to allow construction and installation of wires, conduits, vaults, or other appurtenances of the Cable System on the owner's property, then the owner shall be required to grant the Grantee an easement, in form reviewed and approved by the City's attorney, allowing for such construction and installation. No construction or installation shall be granted without the Grantee first having obtained the easement along with written approval of the City, and that of the property owner.

(c) A Grantee shall file plans, specifications, and plat maps of the entire Cable System showing materials of construction and horizontal and vertical locations with respect to property lines and grade lines in the office of the Director of Public Works prior to the issuance of a permit for construction or reconstruction. Prior to requesting the issuance of a permit for the installation or modification of any facility or apparatus in accordance with the provisions of this Section, a Grantee shall file such plans and plat maps with all utility companies and public agencies whose facilities are affected by such installation and obtain a statement signed by a responsible official thereof that such utility or public agency has no objection to proposed location of such facility. Such utility companies and public agencies shall act upon a request made to them by a Grantee in accordance with the foregoing provisions within thirty (30) days after such request has been made to such utility or public agency.

(d) The Grantee shall, within ninety (90) days after the completion date of Cable System construction, reconstruction, or upgrade, furnish to the City complete “as-built” plans of the Cable System and shall, thereafter, furnish to the City amendments to such plans within forty-five (45) days after completion of any extension or modification of the Cable System. If so requested by the Grantee, the City shall keep such as-built plans confidential to the extent allowable by law, and shall show such plans only to those employees, contractors or City officials who need to see them as a part of their responsibilities to the City, or pursuant to utility locating responsibilities. At such time as the City expands the database of its Geographic Information System (GIS) to include the plans maps of the Cable System, the Grantee shall provide “as-built” plans and maps in an electronic format (such as AutoCAD) which is compatible with GIS software used by the City.

(e) A Grantee will comply with the provisions of Chapter 10.3 of Title 56 of the Code of Virginia which provides for location of general utility services.

#### **Sec. 12.1-16. Plan review and permits.**

(a) Plan review and briefings. The City shall have the right to review the Grantee’s construction plans and specifications prior to the commencement of any new construction to assure compliance with the standards specified in this Ordinance and to inspect all aspects of Cable System construction. The City shall not, however, be required to review or approve such plans and specifications or to make such inspections, and the City specifically disclaims such obligation. A Grantee shall be solely responsible for taking all steps necessary to assure compliance with such standards and to ensure that the Cable System is installed in a safe manner and pursuant to the terms and conditions of this Ordinance and the Franchise Agreement.

(b) Before beginning new construction or reconstruction of, or on any part of, the Cable System, the Grantee’s chief engineer or designated individual shall meet with the City Manager or designated individual to explain the Grantee’s construction plans and work program in detail. Similar briefings shall be held from time to time as deemed necessary by either the City or the Grantee until the work is completed.

(c) Permits required. A Grantee shall obtain a permit and shall perform the work authorized in such permit in accordance with all requirements of the City Codes, and any subsequent ordinances or regulations currently in force or that may be adopted by the City regarding excavation work. The permit fee paid pursuant to Section 35-55 of the City Code shall be in addition to the other fees required in this Ordinance and a Franchise Agreement.

(d) The permit application shall include a plan drawn in sufficient detail to demonstrate to the City that the Cable System will be constructed in accordance with all applicable codes and ordinances. Where cable is to be installed on existing poles, the permit application shall include a drawing showing the existing poles and additional poles, if requested.

No construction or other work relating to such facilities within the Streets or Public Ways of the City shall be commenced until the City shall have approved and issued a permit on the plans, specifications and methods for such work. Said permit shall state the particular part or point of the Streets where said construction, reconstruction, or excavation is to be made and the length of time in which such permit shall authorize such work to be done. Any such permit may be so conditioned or restricted as deemed necessary by the City to protect the public health and safety.

(e) The Grantee shall provide to the Department of Public Works prior to the commencement of any construction or alteration of its facilities in the Streets or Public Ways, a subsurface utility engineering study on the proposed route of construction or expansion, which shall consist, at a minimum, of completion of the following tasks:

1. Secure all available “as-built” plans, plats, and other location data indicating the existence and approximate location of all facilities along the proposed construction route;
2. Visibly survey and record the location and dimensions of any above ground features of underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts, vault covers, pedestals, and visible street cut repairs;
3. Plot and incorporate the data obtained from completion of the tasks described in Subsections 1. and 2. on the Grantee’s proposed system route maps, plan sheets, and computer aided drafting and design (CAD) files.

(e) Without characterizing the violation of other provisions of this ordinance, the failure to obtain said permits shall constitute a material violation of this ordinance.

#### **Sec. 12.1-17. Use of poles, towers, and conduits.**

(a) For the purpose of constructing, installing, operating, and maintaining the wires, cables, appliances, fixtures, and appurtenances necessary to the Cable System, A Grantee shall be required to use the poles, towers, or conduits of others, except as further provided in the next succeeding paragraph. Others are defined as those public utilities, such as the electric utility and telephone utility which have municipal authority or franchise grant to construct, install, and maintain poles, towers, or conduits within the City.

For the purpose of this Section, the Grantee shall obtain from each of the utilities having franchise within the City, an agreement whereby the Grantee may use the poles, towers, or conduits of the utility for the purposes of the Grantee, except that the Grantee shall have the right to construct its own poles, towers, and conduits when same shall assist the Cable System and shall not adversely affect the existing utility poles, towers, and conduits and unduly damage the rights-of-way and other public places and property of the City.

The terms and conditions of such agreements shall be a matter of determination between the Grantee and the utility, except that in no case shall an agreement entitle the Grantee beyond the terms and conditions of its franchise, nor shall it entitle a utility beyond the terms and conditions of its franchise from the City, nor shall it entitle the utility to favor the Grantee beyond the terms and conditions of its franchise.

A Grantee shall file with the City Manager an executed copy of each of the agreements entered into between the Grantee and the utility, afore defined. Any amendment or revision to an agreement shall be similarly filed. In the event of expiration or cancellation of any agreement, the Grantee shall, within one hundred eighty (180) days after the date of such expiration or cancellation, obtain and enter into a new agreement with the particular utility. In the event any

utility shall discontinue its utility operations by franchise forfeiture, termination or otherwise and shall not continue operation, then the Grantee hereunder shall, within one hundred eighty (180) days after franchise grant to any new utility, obtain an agreement as prescribed in this Section from the new utility.

As cited herein, it is intended that such agreement shall be with each utility as defined above to the exclusion of none. Where the Grantee desires to extend its cables and lines, and poles or conduits of one (1) or more utilities are not available, the Grantee shall call upon a utility for such pole or conduit construction if the Grantee is unable to construct its own poles or conduits. The purpose of this requirement is that there be in effect at all times by the Grantee a current attachment agreement with each utility in order that the Grantee may function under the pole and conduit interchange of use arrangements as exist between the utilities and the City.

(b) Erection, removal and common uses of poles and conduits belonging to a Grantee:

1. No poles or conduits shall be erected by the Grantee without prior approval of the City with regard to location, height, types, and any other pertinent aspect. Furthermore, no location of any pole or conduit of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.

2. Where poles or other conduits already existing for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City may require the Grantee to use such poles and conduits if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

3. Where the City or a public utility serving the City desires to make use of the poles or conduits of the Grantee, but agreement thereof with the Grantee cannot be reached, the City may require the Grantee to permit such use for such consideration and upon such terms as the City shall determine to be just and reasonable, if the City determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

#### **Sec. 12.1-18. Construction and technical standards.**

(a) The following construction standards shall apply to all Grantees operating a Cable System within the Franchise Area:

1. Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner consistent with all laws, ordinances, and construction standards of the City of Lynchburg, construction standards of the National Cable Telecommunications Association (NCTA), and detailed standards submitted by a Grantee as part of its application for a cable television Franchise.

2. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

3. The Grantee shall at all times comply with the most recent version adopted by the City of:

- a. National Electrical Safety Code (National Bureau of Standards);
- b. National Electrical Code (National Bureau of Fire Underwriters);
- c. Bell System Code of Pole Line Construction;

d. NCTA Recommended Practices for Measurements on Cable Television Systems; and

e. Applicable FCC or other federal, state and local regulations.

4. In any event, the System shall not endanger or interfere with the safety of persons or property in the Franchise Area or other areas where the Grantee may have equipment located.

5. Any antenna structure used in the System shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

6. All towers, antennas, satellite receiving stations, and other exposed equipment, including Subscriber Drops and power supplies of Grantee used in the provision of Cable Service shall be properly grounded in accordance with the National Electrical Code and installed in accordance with the National Electrical Safety Code.

7. All working facilities and conditions used during construction, installation and maintenance of the System shall comply with the standards of the Occupational Safety and Health Administration and the Commonwealth of Virginia.

8. The Grantee regularly shall check radio frequency leakage at reception locations for emergency radio services to prove that no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

9. The Grantee shall maintain equipment capable of providing standby power for Headend, node sites, transportation and trunk amplifiers for a minimum of four (4) hours.

10. A Grantee shall put, keep, and maintain all parts of the Cable System in good condition throughout the entire term of a Franchise. All work involved in the construction, operation, maintenance, repair, and removal of the Cable System, or any part thereof, shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the Cable System, including without limitation any means used to distribute signals over or within the Cable System, is harmful to the health or safety of any Person, then the Grantee, at its sole cost and expense, shall promptly correct all such conditions.

11. A Grantee shall not allow its Cable System operations to interfere with television reception of Persons not served by the Grantee, nor shall the Cable System interfere with, obstruct, or hinder in any manner the operation of the various utilities serving the residents of the City.

12. Any contractor, subcontractor, or other Person proposed to be employed for the installation, maintenance, relocation, or repair of Cable System equipment or facilities shall be licensed in accordance with applicable laws and shall be thoroughly experienced in the work for which he or she is retained.

13. All poles, wires, conduits, cables, equipment, pipes, appurtenances, structures, and other facilities of the Cable System shall be installed and located in compliance with all applicable City codes and ordinances and the applicable provisions of the Franchise so as to cause minimum interference with the rights and reasonable convenience of the general public, all as determined by the City in its sole and absolute discretion.



(b) The following technical standards shall apply to all Grantees operating a Cable System within the Franchise Area:

1. A Grantee shall construct and operate the Cable System to comply with the FCC technical standards as contained in 47 U.S.C. §76, Subpart K of the Commission's rules and regulations, as updated and amended from time to time.

2. A Grantee shall perform all tests necessary to determine compliance with the FCC technical standards. Tests shall include, at minimum, proof-of-performance tests required by FCC Rule Section 76.601 (47 U.S.C. §76.601) and such additional or repeat tests involving specific Subscriber terminals as may be required to determine compliance with the FCC technical standards.

3. Written records of test results shall be maintained at a Grantee's local office and made available for inspection by the City or other designated agent of the City, upon request of the City. In addition, a Grantee shall provide the City, upon request, a written report of the results of the Grantee's annual Proof-of-Performance tests.

The Grantee shall pay the costs incurred by the City for any technical assistance deemed necessary by the City for obtaining independent verification of technical compliance with all standards.

4. The City or other designated agent of the City may monitor and facilitate the enforcement of the FCC technical standards referenced herein in accordance with the *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96-85, FCC 99-57, released March 29, 1999* as directed by the City.

#### **Sec. 12.1-19. Required services and facilities.**

(a) A Grantee shall, as a part of an initial Franchise, provide the Franchising Authority with a written description of the Cable System within the Franchise Area, including technical characteristics, Channel capacity, Channel carriage, and a strand map.

(b) Any Cable System shall provide a minimum of ninety (90) Channels without regard to method of delivery or capacity, stereo sound reproduction capacity, where a stereo signal is provided by the programmer, and platform expansion capability, without regard to technological format, that enables a Grantee to respond to marketplace conditions for enhanced Cable Services.

(c) A Grantee's Cable System shall be equipped with power generation equipment which starts automatically in the event of a power failure or other loss of conventional power to provide electric service to the Cable System, including its Headend and associated equipment. Battery backup power to the Cable System shall be provided in accordance with Section 12.1-18(a)9. Other power generation equipment serving the Headend shall have a capacity to operate the Headend for at least eight (8) hours during a period of electric service interruption.

(d) A Grantee shall install electronic status Monitoring equipment at locations consistent with the Grantee's engineering practices.

(e) A Grantee shall design said Cable System with the capability to provide upstream and downstream Channel capacity. A Grantee shall also operate and maintain said Cable System in a manner which will enable continuous twenty-four (24) hour operation of all services as required herein.

(f) Upon request of the Subscriber, a Grantee shall make available a "parental control" mechanism or device that permits the Subscriber to "lock out" audible and visual reception of

programming of the Subscriber's choice. For purposes of this Ordinance, a Converter box which contains a microprocessing chip that enables blocking or scrambling of cablecast signals, shall meet the requirements of this section.

#### **Sec. 12.1-20. Use of streets.**

(a) General control and location of lines:

1. A Grantee, in any opening it shall make in the Streets and Public Ways in the City, shall be in compliance with the provisions of Chapter 10.3 of Title 56 of the Code of Virginia which provides for location of general utility services, and shall also be subject to Section 35-58 of the Lynchburg City Code, or its successor, providing for excavation standards of Streets and other Public Ways and public properties, the provisions of the Franchise Agreement, and to all applicable ordinances and regulations.

2. All poles erected by others on behalf of the Grantee shall be neat and symmetrical and shall be so located as to in no way interfere with the safety or convenience of Persons traveling on or over the Streets, Public Ways, and public places.

3. The City reserves the right by resolution or otherwise to further or specifically designate the locations of any poles, towers, lines, cable, or conduit, with reference to public utility lines or conduit facilities, such as sewer, water, electricity, telephone, and gas in such a manner as to promote the public safety and to protect public property. Failure by the City to so designate shall not relieve the Grantee of responsibility in matters of public safety.

4. Such poles, lines, or conduit as may be constructed or located shall be constructed or located as not to interfere with the construction, location, and maintenance of lines of municipal utilities or duly franchised or established public service corporations.

5. Any designation of location required or authorized herein shall be accomplished by the City so as not to unnecessarily delay the Grantee in any of its operations.

6. The city hereby reserves the right at all times to reject any proposed installation by or on behalf of the Grantee whose manner or place of construction the City deems contrary to the provisions of this Ordinance, or to the public interest, and may order and direct the Grantee or its agent, at its own expense, to move the location or alter the construction of any existing installation wherever the City Council deems the public interest to require such removal or alteration, having due regard to the equities of the parties concerned and the purpose of this ordinance.

(b) Disturbance of Streets – Restoration.

1. Written permits, upon payable of applicable fee, shall be obtained by the Grantee in the manner set forth in Section 12.1-16 (c)-(e) hereinabove. In the event of an emergency involving public safety, the requirement for permit shall be waived.

2. Immediately after lines or services are installed or repaired by the Grantee, the incidental trenches, openings, cuts, or excavations shall be refilled by the Grantee in accordance with Section 35-58 of the Lynchburg City Code entitled "Reconstruction, disposition of deposits, or its successor. Pavement, sidewalks, curbs, gutters, or other portions of Streets or public places destroyed, disturbed, or damaged by such work shall be promptly restored and replaced with like materials to their former condition by the Grantee at its own expense; however, where it is necessary, and if permitted, during construction or installation, then the Grantee at its own expense shall provide such different materials.

a. Sidewalks. Where a cut or disturbance is made in a section of sidewalk paving, rather than replacing only the area actually cut, the Grantee shall replace the full width of the existing walk and full length of the section or sections cut, a section being determined as that area marked by expansion joints or scoring.

3. The Grantee shall maintain, repair, and keep in good condition for a period of one (1) year following such disturbance, all portions of Streets and Public Ways disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by the Grantee.

The Grantee shall in any Streets and Public Ways promptly remove or correct any obstruction or defect which may be caused by the Grantee or its agents in the operation or maintenance of the Grantee's properties. Any such obstruction or defect which is not promptly removed, repaired, or corrected by the Grantee, after proper notice to the Grantee directing removal, repair, or correction, may be removed or corrected by the City and the costs thereof shall be charged against the Grantee. In the event that the Grantee fails to perform such replacement or restoration within thirty (30) days to the reasonable satisfaction of the City, the City Council shall have the right to undertake remedial restoration activities at the Grantee's cost, with such costs to be chargeable against the Security Fund required of the Grantee hereinbelow. Where the Grantee has failed to replace or restore private property, replacement or restoration shall be at the sole expense of the Grantee. Demand for payment to the owner for such replacement shall be in writing. Expense of damage, relocation, or replacement to utility lines, sanitary sewers, storm sewers, and storm drains, where such expense results from construction, installation, or maintenance of Grantee's lines or facilities, shall be borne by the Grantee and any expense incurred in connection thereto by the City shall be reimbursed by the Grantee. Collection may be made by resort to the letter of credit or cash security deposit established pursuant to this Ordinance, or by court action, or otherwise.

a. Emergency removal of facilities. Whenever, in case of emergency, it becomes necessary in the judgment of the City Manager, Chief of Police or Fire Chief, to remove or damage any of the Grantee's facilities, no charge shall be made by the Grantee against the City for restoration or repair.

4. A Grantee shall not open or disturb or encumber, at any one (1) time, any more of such public Streets than may be reasonably necessary, in the opinion of the Director of Public Works, to enable it to proceed with advantage in laying or repairing its lines. Neither shall a Grantee permit any such Street, sidewalk, Public Way, or public place so opened, disturbed or encumbered for a longer period of time than shall be reasonably necessary in the opinion of the Director of Public Works, or other proper official of the City. In all cases, where any Street, Public Way, or public place shall be excavated, disturbed, or encumbered by the Grantee, the Grantee shall take all precautions necessary or proper for the protection of the public. The Grantee shall at all times employ reasonable care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, and nuisances to the public. Suitable barricades, flags, lights, signs, flares, or other devices to give adequate notice to the public shall be used at such times and places as are required by applicable ordinances and at such additional times and places as are reasonably required for the safety of all members of the public.

5. Whenever the City shall widen, reconstruct, realign, pave, or repave any Street, Public Way, or public place, or shall change the grade or line of any Street, Public Way, or public place or shall construct or reconstruct any conduit, water main, sewer or water connection, or other municipal works or utility, it shall be the duty of the Grantee, when so requested by the City, to change its lines, services, or other property in the Streets, Public Ways, or public places at its

own expense so as to conform with the new widening, location alignment, or grade of such Street, Public Way, or public place and so as not to interfere with the conduits, sewers, and other mains as constructed or reconstructed. In the event that the Grantee fails to move its lines in a timely manner which result in delays to the City and/or its contractors, the Grantee shall be liable for any costs incurred by the City and/or its contractors as a result of delays created by the Grantee.

a. Upon written notice by the City of its intended work, within a reasonable period of time, a Grantee shall accomplish its obligation in accordance with and to conform to the plans of the City for such construction, reconstruction, or improvements. The Grantee shall be required to remove Cable System lines, pedestals and vaults at its own expense, whether installed above or below ground, when the Street, Public Way, or public ground in which they are located is vacated by formal action of the City Council for the convenience of abutting property owners. Such removal shall be completed within sixty (60) days following written notice by the City to the Grantee of such vacation.

(c) Excavation work and time periods.

1. No excavation on or in any Public Street, Public Way, public property or private property in the City permitted hereunder in connection with the installation of any Cable System facilities shall be made more than twenty-four (24) hours immediately before installation of such facilities. The Grantee may apply for a waiver in unusual circumstances.

2. The Grantee shall notify the Director of Public Works at least seventy-two (72) hours before any excavation on or in any Public Street, Public Way, public property or private property so that the Director of Public Works will have the opportunity to inspect such excavation work. The Grantee shall notify owners of private property at least seventy-two (72) hours before any excavation on their private property.

3. All excavations in lawns or grassy parkways shall be backfilled, tamped and restored with sod within thirty (30) calendar days in accordance with the applicable provisions of this Ordinance.

(d) Location of Pedestals and Vaults.

1. Pedestals and Similar Above Ground Appurtenances.

a. The City has determined that pedestals and similar aboveground appurtenances located on a Street or Public Way (other than in an alley or as provided in Paragraph c. below) or on public property will adversely affect the appearance of the City and of the property therein and, accordingly, pursuant to Section 541(a)(2) of the Cable Act, the Grantee shall not under any circumstances install or locate a pedestal or any similar above ground appurtenance on any Public Street or Public Way (other than in an alley or as provided in Paragraph c. below) or on any public property as a part of any new construction or any relocation or reinstallation.

b. Pedestals or similar above ground appurtenances may be installed on private property only with the express, prior written consent and permission of the affected property owner or his or her authorized agent, or the duly elected or appointed representative of the affected property; provided, however, that such pedestals or above ground appurtenances shall comply with all applicable provisions of the City's Code.

c. Notwithstanding Paragraph b. above, pedestals or similar above ground appurtenances may be installed within certain utility easements on private property without the consent or permission of the affected property owner provided that (i) the Grantee is lawfully authorized to use such utility easement pursuant to state or federal law; (ii) no such pedestal or similar above ground

appurtenance may be installed unless, at the time of the desired installation, there exists within the utility easement , a similar above ground appurtenance of another utility company or entity; and (iii) the Grantee's pedestal or similar above ground appurtenance shall be located as close as is practicable to said existing above ground appurtenance.

2. Vaults. The Grantee shall not install underground vaults on any Street or Public Way after the effective date of a Franchise, except in accordance with and pursuant to the provisions of this subsection. All underground vaults shall be flush mounted with the surface of the land area.

(e) Movement of Buildings. At the request of any Person holding a valid building moving permit issued by the City or other appropriate government authority and upon at least forty-eight (48) hours notice, the Grantee shall temporarily raise, lower, or cut its wires as may be necessary to facilitate such move. The direct expenses of such temporary changes, including standby time, shall be paid to the permit holder, and the Grantee shall have the authority to require payment in advance.

(f) Removal of Vegetation, Tree Trimming.

1. The Grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior written notification to and consent of the City. The Grantee shall provide notice to any affected residents at the same time that the Grantee applies to the City for consent to perform tree trimming. The City shall have the option to do the trimming requested by the Grantee at the cost of the Grantee or by the Grantee in accordance with the City's standards for tree trimming , under the City's supervision and direction. When authorized, trimming shall be limited to the area required for clear cable passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, shall defend and hold City harmless from any and all damages to any tree as a result of trimming, or to the property surrounding any tree, whether such tree is trimmed or removed.

2. The Grantee shall not cut or trim any tree, shrub, or vegetation on private property without first obtaining written authorization from the property owner should the action take place on private property. Any such work shall be done at the Grantee's expense and shall be subject to the supervision and direction of the property owner.

(g) Removal of the Cable System upon termination or revocation of the Franchise. If, upon termination or revocation of a Grantee's Franchise, The City does not elect to purchase the Cable System, and no sale of the Cable System is made to a successor Grantee, then the City shall require that Grantee terminate and dismantle the Cable System, including its wiring, equipment, Headend facilities, if the Headend is located within the boundaries of the City, and related appurtenances except that in the event that the Grantee is providing telecommunications services as defined by the Cable Act, the Grantee shall not be required to remove those facilities which provide said services. Upon completion of termination and dismantling of the Cable System, Grantee shall, upon direction of the City, restore any property, public or private, to the condition in which it existed prior to erection or construction of the Cable System, including any improvements made to such property subsequent to construction of the System. Restoring of City property, including all Streets and Public Ways as defined herein, shall be in accordance with the manner set forth by the Director of Public Works, the directions and specifications of the City as set forth herein and all applicable laws. A Grantee shall restore said Streets and Public Ways at its expense.

1. Except when a sale of a Cable System is pending and the parties are proceeding in good faith, any property of the Grantee remaining in place six (6) months after the termination or revocation

of the Franchise shall be considered permanently abandoned. The City Manager may extend such time if in his or her judgment circumstances warrant an extension. Consent to such extension shall not be reasonably withheld.

2. Any property of the Grantee to be abandoned in place shall be abandoned in such manner as the Director of Public Works shall prescribe.

3. Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the Grantee in place, the property shall belong to the City, and the Grantee shall submit to the City Manager, an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

(h) Unless expressly provided otherwise in a Franchise Agreement, the Grantee shall at all times comply with any and all rules and regulations enacted or to be enacted by the City with reference to construction activity in Streets and Public Ways.

#### **Sec. 12.1-21. Indemnification and insurance.**

(a) The Grantee shall save and defend the City from claims and shall save and hold the City, its Corporate Authorities, officers (elected and appointed), boards, commissions, employees, and agents, and all associated, affiliated, allied and subsidiary entities of the City now existing or hereinafter created, and their boards, commissions, employees, and agents (hereinafter referred to as "Indemnitees") harmless from and against:

1. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any Person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any Person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Cable System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Cable System. Upon the written request of the City such claim or lien shall be discharged or bonded upon such request.

3. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any financing or securities offering by Grantee or its Affiliates for violations of the common law or any laws, statutes or regulations of the Commonwealth of Virginia or of the United States, including those of the Federal Securities and Exchange Commission, whether by the Grantee or otherwise; excluding therefrom, however, claims which are solely based upon and arise solely out of information supplied by the City to the Grantee in writing and included in the offering materials with the express written approval of the City prior to the offering.

(b) Damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the Grantee's Cable System.

(c) The Grantor shall give immediate notice to the Grantee of any claim or facts which might give rise to a claim under this Ordinance. Said notice shall state particulars sufficient to identify the claim and shall contain reasonably obtainable information respecting the time, place, and circumstances of the occurrence underlying the claim or potential claim. However, the City shall not be held liable in any way should said notice not be given to the Grantee.

(d) The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including Streets and Public Ways, and the Grantee hereby agrees to indemnify and hold harmless the Indemnites against and from any claim asserted or liability imposed upon the Indemnites for personal injury or property damage to any Person arising out of the installation, operation, maintenance or condition of the Cable System or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the Indemnites that arises or is related to wanton or willful negligence by the Indemnites.

(e) In the event any action or proceeding shall be brought against the Indemnites by reason of any matter for which the Indemnites are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnites, at the Grantee's sole cost and expense, resist and defend the same, provided further, however, that the Grantee shall not admit liability in any such matter on behalf of the Indemnites without the written consent of the City Attorney or his or her designee.

(f) The City shall give the Grantee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section.

(g) Nothing in this Ordinance or in any Franchise is intended to, or shall be construed or applied to, express or imply a waiver by the City of statutory provisions, privileges or immunities of any kind or nature as set forth in the Code of Virginia, including the limits of liability of the City as exists presently or as may be increased from time to time by the Legislature.

(h) The Grantee shall maintain and by its acceptance of a Franchise specifically agrees that it will maintain throughout the term of the Franchise, general comprehensive liability insurance insuring the Grantee. All liability insurance shall include an endorsement in a specific form which names as joint and several insureds the City and the City's officers, boards, commissions, elected and appointed officials, agents, and employees, with respect to all claims arising out of the operation and maintenance of the Cable System under the Franchise. Liability insurance mentioned hereinbelow shall be in the minimum amounts of:

1. \$5,000,000.00 for bodily injury or death to any one Person, within the limit of ten million dollars (\$10,000,000) for bodily injury or death resulting from any one accident;

2. \$5,000,000.00 for property damage, including damage to City property, from any one accident;

3. \$5,000,000.00 for all other types of liability resulting from any one occurrence;

4. Workers Compensation Insurance as required by Commonwealth law;

5. The Grantee shall carry and maintain in its own name automobile liability insurance with a limit of \$5,000,000 for each person and \$5,000,000 for each accident for property damage with

respect to owned and non-owned automobiles for the operation of which the Grantee is responsible; and

6. Coverage for copyright infringement.

(i) The inclusion of more than one (1) insured shall not operate to increase the limit of the Grantee's liability and that insurer waives any right on contribution with insurance which may be available to the City of Lynchburg.

(j) All policies of insurance required by this Section shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a General Rating of "A-" and a Financial Size Category of "A:X" as determined by Best Insurance Rating Services unless otherwise specified by the Franchise Agreement.

(k) Certificates of Insurance obtained by the Grantee in compliance with this Section must be approved by the City Attorney and such insurance policy certificate of insurance, shall be filed and maintained with the City Clerk during the term of the Franchise. The Grantee shall immediately advise the City Attorney of any litigation that may develop that would affect this insurance.

(l) Should the city attorney find a document to be in non-compliance, then the City Attorney shall so notify a Grantee and Grantee shall be obligated to cure the defect.

(m) A Grantee may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection (h) of this Section. If Grantee self-insures, it is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under Subsection (h) hereinabove or the requirements of Subsection (o) of this Section. If a Grantee elects to self-insure, it shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements under Subsection (h) of this Section.

(n) Neither the provisions of this Section, nor any damages recovered by the City thereunder, shall be construed to or limit the liability of the Grantee under any Franchise issued hereunder or for damages.

(o) Such insurance policies provided for herein shall name the Grantor, its officers, boards, commissions, agents and employees as additional insured, and shall be primary to any insurance carried by the Grantor. The insurance policies required by this Section shall be carried and maintained by the Grantee throughout the term of the Franchise and such other period of time during which the Grantee operates or is engaged in the removal of its cable system. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, of written notice of such intention to cancel or not to renew.

(p) If a Grantee uses any subcontractors ("Subcontractors") to perform any work relating to the Cable System, Grantee will be responsible for supervision, quality control, payment, and insurance of and for all work performed by the Subcontractors. Grantee will insure that all Subcontractors are operating in compliance with all applicable federal and Commonwealth laws and local ordinances. Subcontractors will be as specified in required permits if the work to be done requires a permit.



## **Sec. 12.1-22. Forms of security.**

(a) Initial Franchises only: Within thirty (30) days after the award of an initial Franchise, the Grantee shall deposit with the City an irrevocable letter of credit from a financial institution running to the City in the amount of two hundred thousand dollars (\$200,000.00.) issued by a federally insured commercial lending institution, and a cash security deposit in the amount of ten thousand dollars (\$10,000.00). The form and substance of said letter of credit shall be used to insure the faithful performance by a Grantee of all provisions of this Chapter and resulting Franchise Agreement; and compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over the acts of the Grantee, or defaults under a Franchise and the payment by a Grantee of any penalties, liquidated damages, claims, liens, and taxes due the City which arise by reason of the construction, operation, or maintenance of the Cable System, including cost of removal or abandonment of any property of a Grantee.

(b) Renewed Franchises only: Within thirty (30) days after the award of an initial Franchise, the Grantee shall deposit with the City an irrevocable letter of credit from a financial institution running to the City in the amount of one hundred thousand dollars (\$100,000.00.) issued by a federally insured commercial lending institution and a cash security deposit in the amount of ten thousand dollars (\$10,000.00). The form and substance of said letter of credit shall be used to insure the faithful performance by a Grantee of all provisions of this Chapter and resulting Franchise Agreement; and compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over the acts of the Grantee, or defaults under a Franchise and the payment by a Grantee of any penalties, liquidated damages, claims, liens, and taxes due the City which arise by reason of the construction, operation, or maintenance of the Cable System, including cost of removal or abandonment of any property of a Grantee.

(c) Said cash escrow deposit or letter of credit, and cash security deposit shall be recoverable from the escrow agent or principal and sureties, or from the cash security deposit, by the City for all damages and costs, whether direct or indirect, resulting from the failure of the Grantee to well and faithfully observe and perform any provision of this Ordinance or the Franchise Agreement.

(d) The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager certifying that the Grantee has failed to comply with this Chapter, its Franchise or Franchise Agreement after having been given due notice and opportunity to cure the failure to comply. Such certificate shall also state the specific reasons for the failure of compliance, and stating the basis of the amount being drawn. Examples of a basis for drawing upon the letter of credit include, but are not limited to the following:

1. Failure of the Grantee to pay to the City any taxes after ten (10) days written notice of delinquency;
2. Failure of the Grantee to pay to the City after ten (10) days written notice any amounts due and owing the City by reason of the indemnity provisions of Section 12.1-19 of this Chapter;
3. Failure by the Grantee to pay the City any liquidated damages due and owing to the City pursuant to a Franchise Agreement;
4. Failure by the Grantee to pay to the City any amounts due pursuant to Section 12.1-9(b)(10) of this Chapter;

5. Failure by the Grantee to pay upon ten (10) days written notice any amounts owing as Franchise Fees pursuant to Section 12.1-27 of this Chapter.

6. The cost of removal or abandonment of any property, or other costs which may be in default, which costs shall be conclusively presumed to amount to a sum equal to at least the sum of such letter of credit or cash security deposit.

(e) The City may withdraw money from the letter of credit or cash security fund in accordance with the procedures set forth in Subsection (f) below.

(f) The City shall provide Grantee with written notice informing Grantee that such amounts are due to the City. The written notice shall describe, in reasonable detail, the reasons for the assessment. The Grantee shall have thirty (30) days subsequent to receipt of the notice within which to cure every failure cited by the City or to notify the City that there is a dispute as to whether Grantee believes such amounts are due the City. Such notice by the Grantee to the City shall specify with particularity the basis of Grantee's belief that such monies are not due the City.

(g) Any letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit may not be canceled by the issuer bank nor the intention not to renew be stated by the issuer bank until thirty (30) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not to renew."

(h) Except as noted below, receipt of the thirty (30) day notice by the City shall be construed as a default granting the City the right to immediate payment from the issuer bank of the amount from the letter of credit necessary to cure the default. Grantee shall be entitled to cure the conditional default within fifteen (15) days of receipt of the aforementioned thirty (30) day notice.

(i) The letter of credit and cash security deposit shall be maintained at the amount established herein for the entire term of the Franchise, even if amounts have to be withdrawn pursuant to this Ordinance. Grantee shall promptly replace any amounts withdrawn from the letter of credit or cash security deposit.

(j) The rights reserved to the City with respect to the letter of credit and cash security deposit are in addition to all other lawful rights and remedies of the City, whether reserved by the Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit and security deposit shall affect any other lawful right the City may have.

(k) The City, at any time during the term of a Franchise, may waive, in writing, Grantee's requirement to maintain a letter of credit or cash security deposit.

### **Sec. 12.1-23. Construction security.**

(a) Initial Franchise Construction Bond: Within thirty (30) days after the award of a Franchise, a Grantee shall obtain and maintain at its cost and expense, and file with the Clerk of Council, a corporate surety bond or irrevocable letter of credit by a financial institution authorized to do business in the Commonwealth of Virginia, and found acceptable by the City Attorney, in an amount established in a Franchise Agreement to guarantee the timely construction and/or reconstruction and full activation of a Cable System and the safeguarding of damage to public and private property and restoration of damages incurred with utilities. This financial instrument shall be known as the "Construction Bond."

(b) Initial Franchise Removal Bond: Upon completion of construction, and thereafter until the Grantee's facilities have been removed from the Rights-of-Way, and for one hundred twenty

(120) days thereafter (unless the City notifies the Grantee that a reasonably longer period shall apply), a Grantee shall deposit with the City and maintain an irrevocable letter of credit or a corporate surety bond in an amount established in a Franchise Agreement which shall be known as a "Removal Bond."

(c) Renewed Franchise Construction Security: Prior to being approved for a reconstruction or upgrade of the system that involves significant excavation or other disturbance of Public Streets and/or Public Ways, the Grantee shall file with the City an irrevocable construction letter of credit in an amount to be determined in a Franchise Agreement. This letter of credit shall be maintained throughout the reconstruction and/or upgrade period and until such time as determined by the City based upon notification of the completion of the upgrade by the Grantee, unless specified in the Franchise Agreement. Upon the City's determination that the upgrade or reconstruction of the Cable System is complete, the requirement for the construction letter of credit shall be rescinded.

(d) Renewed Franchise Removal Bond: Upon completion of reconstruction and/or upgrade, and thereafter until the Grantee's facilities have been removed from the Rights-of-Way, and for one hundred twenty (120) days thereafter (unless the City notifies the Grantee that a reasonably longer period shall apply), a Grantee shall deposit with the City and maintain an irrevocable letter of credit or a corporate surety bond in an amount established in a Franchise Agreement which shall be known as a "Removal Bond."

(e) The Construction Bond and Removal Bond shall serve as security for:

1. The faithful performance by the Grantee of all terms, conditions, and obligations, including restoration of the Rights-of-Way;
2. Any expenditure, damage, or loss incurred to the City occasioned by the Grantee's breach of this Ordinance, its Franchise Agreement, or its failure to comply with all rules, regulations, orders, permits, and other directives of the City pertaining to construction or reconstruction of its Cable System;
3. Payment of all compensation due to the City related to the construction or reconstruction of its Cable System, including permit fees;
4. The payment of premiums for the liability insurance required pursuant to this Ordinance and its Franchise Agreement.

(f) In the event that the Grantee constructs, reconstructs, or upgrades the Cable System after the initiation of upgrade or rebuild and if the Grantee fails to diligently pursue and complete the construction of the installation or upgrade of its cable system, or fails to well and truly observe, fulfill and perform each term and condition of this Ordinance or of the Franchise as it relates to construction, installation or upgrade of the system, then there shall be recoverable jointly and severally, from the principal and surety of the construction bond or letter of credit and the removal bond and letter of credit, the cost of completing such construction and any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the City's legal staff, and costs, up to the full amount of the construction and removal bonds or letters of credit.

(g) The letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, a written notice of such intent to cancel or not to renew."

(h) Upon receipt of a thirty (30) day notice, this shall be construed as default granting the City the right to demand payment on the letter of credit or surety bond.

(i) Any extension to the prescribed construction or reconstruction time limit must be authorized by the Council. Such extension shall be authorized only when the Council finds that such extension is necessary and appropriate due to causes beyond the control of the Grantee.

(j) The Construction Bond shall be terminated only after the Council finds that a Grantee has satisfactorily completed initial construction and activation or reconstruction of the Cable System pursuant to the terms and conditions of this Chapter and the Franchise Agreement.

(k) The City, at any time during the term of this Ordinance, may, in writing, waive or reduce Grantee's requirement to maintain a construction letter of credit or surety bond or a removal letter of credit or surety bond or both.

(l) The rights reserved to the City with respect to the Construction Bond and Removal Bond are in addition to all other rights of the City, whether reserved by this Chapter or authorized by law, and no action, proceeding, or exercise of a right with respect to such Construction Bond or Removal Bond shall affect any other rights the City may have.

#### **Sec. 12.1-24. Transfer of ownership or control and assignments.**

(a) A Franchise shall not be assigned, transferred, pledged, leased, sublet, hypothecated, or mortgaged, nor shall title thereto, legal or equitable, either in whole or in part, be disposed of, transferred in trust, pledged, in whole or in part, by voluntary sale, merger, sale and leaseback consolidation or otherwise, or by forced or involuntary sale, without prior consent of the City expressed by ordinance and then on such conditions as therein may be prescribed. Any sale, transfer, or assignment not made according to the procedures set forth in this Ordinance shall render the Franchise Agreement void. The sale, transfer, or assignment in bulk of the major part of the tangible assets of the Grantee shall be considered an assignment and shall be subject to the provisions of this Section.

(b) The Grantee may transfer or assign the Franchise to a wholly owned subsidiary of the Grantee and such subsidiary may transfer or assign the Franchise back to the Grantee with notice to the City, but without such consent, providing that such assignment is without any release of liability of the Grantee.

(c) No such consent shall be required for a transfer of Franchise or the Cable System in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

(d) Any sale, transfer, or assignment authorized by the City shall be made by a bill of sale or similar document, an executed copy of which shall be filed with the City within thirty (30) days after such sale, transfer, or assignment. The City shall not withhold its consent unreasonably. The transferee must, at a minimum, satisfy the legal, financial, and technical qualifications as established by the Act (47 U.S.C. §537), and character qualifications as established for new Franchise applicants as determined by the City. The Grantee shall assist the City in such inquiry regarding these qualifications.

1. In no event shall a transfer of ownership or control be approved without the successor(s) in interest to the Franchise Agreement agreeing in writing to comply with all provisions of the Franchise and such conditions as may be prescribed by the Council expressed by ordinance. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to a Franchise Agreement.

(e) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, ownership or control of the Grantee. The receipt of FCC Form 394 by the City shall constitute notice to the City of a proposed change in ownership or control. Prior approval of the City shall be required where ownership or control of more than ten percent (10%) of the right of control of the Grantee is acquired during the term of the Franchise in any transaction or series of transactions by a Person or group of Persons acting individually or in concert, none of whom owned or controlled ten percent (10%) singularly or collectively, on the effective date of the Franchise Agreement. The word “control” as used herein is not limited to major stockholders but also includes actual working control in whatever manner exercised. By its acceptance of the Franchise Agreement, the Grantee specifically grants and agrees that any such acquisition occurring without a prior approval of the City shall render the Franchise void.

(f) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any Person or group of Persons of ten (10) percent of the voting interest of the Grantee.

(g) In any absence of extraordinary circumstances, the City will not approve any transfer or assignment of a Franchise prior to substantial completion of construction of the proposed Cable System.

(h) The City Council reserves the right of “first refusal” to purchase a Cable System at or above a bona fide offering price being made by a third party when the Cable System is being placed on the market for sale. The City shall exercise such right within ninety (90) days of receipt of FCC Form 394 from the Grantee or such right shall be forfeited. The City shall exercise this right by written notice to the Grantee within thirty (30) days following its receipt of the FCC Form 394. Except for the consideration, the City shall be obligated in exercising this right to accept all other terms of the proposed transfer. The City’s rights hereunder shall in no way affect its independent rights under any other provision of this Ordinance or under the Franchise Agreement.

(i) The City shall have one hundred twenty (120) days to act upon any request for approval of any such assignment, transfer, pledge, lease, sublet, hypothecation, or mortgage. The City shall be deemed to have consented to a proposed assignment, transfer, pledge, lease, sublet, hypothecation, or mortgage if its refusal to consent is not communicated in writing to the Grantee within one hundred twenty (120) days following receipt of said petition and receipt of all necessary information as to the effect of the proposed assignment, transfer, pledge, lease, sublet, hypothecation, or mortgage upon the public, unless the requesting party and the City agree to an extension of time.

(j) The consent or approval of the City to any sale, transfer, lease, trust, mortgage, or other instrument of hypothecation shall not constitute a waiver or release of the rights of the City under this Ordinance and the Franchise Agreement.

#### **Sec. 12.1-25. Franchise review and modification.**

(a) To the extent applicable, the modification provisions of the Cable Act (47 U.S.C. §545), as the same may be amended from time to time, shall govern the procedures and standards for modification of a Franchise. The Grantee may file a request for modification of a Franchise with the City in accordance with said modification provisions at any time during the term of the Franchise.

(b) To the extent that the modification provisions of the Cable Act, as the same may be amended from time to time, are repealed or otherwise not applicable, a Franchise may be modified to the extent permitted by applicable law.

(c) Any modification to a Franchise Agreement shall require the approval of the City Council.

**Sec. 12.1-26. Rates and fees.**

(a) Uniformity: Rates for Cable Service and charges for equipment necessary for the reception of Cable Service shall be uniform throughout the Franchise Area in accordance with applicable law and regulation. A Grantee may establish different rates for tiers of programming, and may establish a rate schedule appropriate to commercial enterprises which differ from such rates provided to residential Dwelling Units. A Grantee may also establish separate rates for Subscribers living in congregate Dwelling Units for which bulk billing rates may be established. A Grantee may create separate rates and service tiers for Dwelling Units which are occupied by businesses, consistent with Federal law.

(b) Non-Discrimination: A Grantee shall not, in its rates or charges, or in the availability of the services or facilities of its Cable System, or in any other respect, discriminate against any Persons, or group of Persons protected by applicable non-discrimination laws; provided, however, the Grantee may offer promotional discounts in order to attract or maintain Subscribers, provided that such discounts are offered on a non-discriminatory basis to similar classes or types of Subscribers in the City.

(c) Filing of Rate Schedule: A Grantee shall file annually with the City, a full, written schedule of all Subscriber and User rates and all other rates, fees, or charges. Said schedule shall be filed no less than thirty (30) days prior to the time such changes are announced by Grantee in the levels of regulated rates, fees, or other charges. Unless otherwise provided in a Franchise Agreement, Grantee shall provide no less than thirty (30) days advance notice to Subscribers, and the City, of any other rates, fees, and other charges.

(d) A Grantee may refuse to offer service to any Person because of due or owing accounts between such Person and the Grantee.

(e) Reservation of rights to regulate Cable Service:

1. The City reserves the right to regulate rates for Basic Cable Service and equipment of the Grantee as allowed by the FCC.

2. In the event that the United States Congress or the FCC allows the City to regulate rates beyond the Basic tier of Cable Service, the City may, at that time, reserve the right to regulate said rates in accordance with FCC regulations, and shall notify the Grantee thirty (30) days in advance of the date that the City intends to begin regulation of said rates.

(f) Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the City has chosen to regulate Basic Cable Service rates within the City. The regulation of Basic Cable Service by the City is subject to the following conditions:

1. In the regulation of Basic Cable Service, the City, as the Franchising Authority, shall adopt and administer, in accordance with 47 U.S.C. §76.910, such regulations consistent with the FCC regulations governing the Basic tier of Cable Service. Where the Grantee adjusts the number of Channels provided on the Cable System to Subscribers, the Grantee shall, in accordance with FCC regulations, as now or hereafter amended, adjust its rates to Subscribers accordingly.

2. Before the Council takes final action on any rate change, public participation will be allowed in the rate regulation proceedings. Interested Persons will be permitted to express their views by

public hearings, written comments, and any other methods that the Council determines will enable public concerns to be heard.

(g) In order to conduct a rate review as such is allowed by FCC regulations, the Grantee's accounting records shall be available for inspection by the City or its agent or designee at all reasonable times. The City shall have access to records of financial transactions for the purpose of verifying the rates as calculated in FCC Forms 1205, 1235, or 1240, or their successors, and as such rates may be prorated to this particular operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the City with the information needed to make accurate determinations as to the financial condition of the Cable System. All financial statements other than FCC Forms 1205, 1235, or 1240 or their successors shall be certified as accurate by a certified public accountant. FCC Forms 1205, 1235, and 1240 or their successors shall be certified as true and correct by a financial officer of the Grantee. Any proprietary information supplied will remain confidential so long as it is consistent with the Freedom of Information Act or other comparable laws of the Commonwealth of Virginia.

(h) The Grantee may offer discounts in rates in accordance with applicable law.

#### **Sec. 12.1-27. Payment of franchise fees.**

(a) For the reason that the Streets and Public Ways to be used by the Grantee in the operation of its Cable System within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the Grantee for the use of said Streets and Public Ways is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee shall pay to the City a Franchise Fee of not less than five percent (5%) of the Grantee's Gross Revenues as defined in Section 12.1-3(bb) or such other maximum amount as allowed by law.

(b) The Franchise Fee payment shall be in addition to any other tax or payment owed to the City by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, City or local taxes.

(c) The Franchise Fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the City within thirty (30) days after the end of each quarter. The Grantee shall also file a complete and accurate statement, verified by an authorized financial officer of the Grantee of all gross receipts for which said quarterly payment is made, and said payment shall be made to the Director of Finance.

(d) The City shall have the right to inspect and copy the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within sixty (60) months following the close of each of the Grantee's fiscal years. Any additional amount due the City as a result of an inspection shall be paid within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the inspection report. The cost of said inspection, including any travel expenses incurred by the City shall be borne by the Grantee if it is properly determined that Grantee's annual payment due to the City for the preceding year is increased thereby by more than four percent (4%), otherwise such costs shall be borne by the City and the Grantee equally.

(e) In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at an annual rate of two (2) percentage points over the prime rate given by Wachovia Bank, N.A., to its most creditworthy borrowers of demand loans as of the date of default.

(f) The Grantee shall maintain books and records of its operations within and related to the City and the Grantee's Cable System in sufficient detail to show gross revenue, by service category, consistent with generally accepted accounting principles (GAAP). Said books and records shall be retained in accordance with the Grantee's document retention policies, but in no event less than five (5) years.

(g) The Grantee shall, annually within ninety (90) days after the close of the Grantee's fiscal year, prepare in accordance with generally accepted accounting principles (GAAP), and submit to the City, a statement of gross revenues audited by a certified public accountant and covering the Grantee's operations in and relating to the City and the Grantee's Cable System.

(h) In the event that the Franchise is revoked or expires, the Grantee shall file with the City, within thirty (30) days of such revocation or expiration, a statement clearly showing the Gross Revenues received by the Grantee since the end of the previous fiscal quarter. The Grantee shall pay such partial Franchise Fees due at the time such statement is filed or within thirty (30) days of such revocation or expiration.

(i) The acceptance by the City of any Franchise Fee payment shall not in any way be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of the Franchise. All Franchise Fee payments shall be subject to audit and re-computation by the City in accordance with this Section.

(j) A Grantee shall acknowledge as follows:

1. The Franchise Fee is not a tax; and

2. The Franchise Fee shall be in addition to any and all taxes, other applicable fees or charges that the Grantee or any affiliate shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee and its affiliates. A Grantee shall pay all business license taxes assessed against its business activities by the City; and

3. Neither the Grantee nor any affiliate shall have or make any claim for any deduction or other credit of all or any part of the Franchise Fee from or against any of said City taxes or other fees or charges that the Grantee or any affiliate is required to pay to the City except as may be identified and authorized by federal law or laws of the Commonwealth of Virginia; and

4. Neither the Grantee nor any affiliate shall apply or seek to apply all or any part of the Franchise Fee as a deduction or other credit from or against any of said City taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Grantee and its affiliates.

5. Except as authorized by law, if the Grantee or any affiliate applies or seeks to apply all or any part of the amount of the Franchise Fee as a deduction or other credit from or against any City tax or other fee or charge, or if the Grantee or any affiliate applies or seeks to apply all or any part of any such tax or other fee or charge as a deduction or other credit from or against the Franchise Fee, then, in any such event, such action will be deemed a violation of this Ordinance.

(k) The City may increase the Franchise Fee if and to the extent that the maximum allowable Franchise Fee is increased by an act of the United States Congress or the FCC. If the City desires to increase the Franchise Fee in that event, then the City shall provide at least thirty (30) days written notice to the Grantee. If, within thirty (30) days after the City's notice, the Grantee so requests, the City shall conduct a public meeting on the Franchise Fee increase. The effective



date of the proposed Franchise Fee increase shall be delayed until the expiration of the thirty (30) day notice period, if within that period the Grantee does not request an opportunity to be heard at a public meeting , or if an opportunity to be heard at a public meeting is requested, until the conclusion of the public meeting conducted pursuant to this Subsection.

**Sec. 12.1-28. Cable programming services.**

(a) A Franchise application or Proposal for renewal shall include a description of Grantee's Cable System design and a description of programming and services being offered, including optional premium services, pay-per-view services, interactive, on-demand services as such is defined in the Cable Act, a description of facilities being proposed for Local Origination Programming and facilities being offered to various community institutions. The offer of programming and services contained within a Grantee's application or Proposal for renewal shall be deemed a binding offer of such Grantee for and to the benefit of the City and the Subscribers of the Grantee. In the event that a program originator ceases to provide a service, or in the event that a Grantee determines that other programming or Cable Services may be of greater benefit to Subscribers, the Grantee may substitute services.

(b) A Grantee may, in accordance with Section 625(c) of the Cable Act (47 U.S.C. §545(c)), upon thirty (30) days advance notice to the City, rearrange, replace, or remove a particular Cable Service required by the Franchise if:

1. Such service is no longer available to the Grantee; or
2. Such service is available to the operator only upon the payment of a royalty required under Section 801(b)(2) of title 17, United States Code, which the Cable Operator can document:
  - a. Is substantially in excess of the amount of such payment required on the date of the Grantee's offer to provide such service; and
  - b. Has not been specifically compensated for through a rate increase or other adjustment.

Pursuant to Section 625(d) of the Cable Act (47 U.S.C. §545(d)), a Grantee may take such actions to rearrange a particular service from one (1) service tier to another, or otherwise offer the service if the rates for all of the service tiers involved in such actions are not subject to regulation under Section 623 of the Cable Act (47 U.S.A. §543).

(c) Categories of Service to be provided: A Grantee shall provide on the Cable System all Over-the-Air broadcast stations required to be carried by federal law or FCC regulations. A Grantee shall provide a wide range and diversity of programming for Subscribers residing in the Franchise Area. Unless otherwise provided by a Franchise Agreement, categories of programming comparable in quality, mix, and level to be provided by a Grantee to Subscribers shall include without limitation, the following:

1. Local, regional, national, and international news programs
2. Local, regional, national, and international sports and sporting events
3. Local, regional, and national weather
4. Educational programming
5. Children programming

6. Music programming (including audio music services)
7. Public affairs programming
8. General entertainment programming, including movies
9. Cultural programming
10. Pay-Per-View programming
11. Financial and business-related programming
12. Foreign language programming
13. High-speed Internet access, if deemed to be a Cable Service or such other service subject to regulation by a Franchising Authority under the Telecommunications Act, or a successor provision, by the FCC, by the United States Congress, or by a court of competent jurisdiction.

Where a broadcaster providing Over-the-Air broadcast service to the Grantee has not reached an agreement with a Grantee for carriage of the broadcaster's signal by the deadline established by the FCC for consent to transmit said broadcaster's signal ("Retransmission Consent"), a Grantee shall not be obligated pursuant to this Ordinance to carry said signal until such agreement has been finalized.

(d) A Grantee shall comply with all applicable laws concerning the cable casting of obscene programming.

(e) Unless otherwise provided in a Franchise Agreement, a Grantee shall Dedicate an amount of Channel space on its Cable System at a minimum level of one (1) Channel for Public Access Channel programming, one (1) Channel for Educational Access Channel programming, and one (1) Channel for Government Access Channel programming. Grantee shall, wherever possible, cluster access programming Channels together. In no event shall the Grantee place any access programming Channel on any expanded Basic Cable Service, satellite service, or digital service tier of programming, or delete any access programming Channel without the express written consent of the City Council.

1. The Public Access Channel shall be made available to residents of the City on a first-come, first-served, non-discriminatory basis. Where a Grantee operates a Public Access Channel, the Grantee shall adopt operating rules for the Public Access Channel, designed to prohibit the presentation of any advertising material designed to promote the sale of commercial products or services, including advertising by candidates for public office, lottery information, and programming in violation of any federal, Commonwealth, or local law. A Grantee shall keep a complete record of the names and addresses of all Persons, groups, or Users requesting access time. A Grantee shall provide said record to the Franchising Authority upon request.

2. The Educational Access Channel shall be made available for the use of all Schools as defined by the Code of Virginia, and public libraries, free of charge. Consistent with Section 612 of the Cable Act (47 U.S.C. §532), an Educational Access Channel shall not carry paid advertising to the extent that it would be considered a Channel for commercial use.

3. The Governmental Access Channel shall be made available for the use of units of local governments serving the Franchise Area free of charge. This Channel may be shared between units of local government including the City and Amherst, Bedford, and Campbell Counties.

(f) If any Educational or Governmental Access Channel is being utilized more than ten (10) hours per day, five (5) days a week between the hours of 6:00 A.M. and 11:00 P.M., for twelve (12) consecutive weeks, including playback and text programming; or if any Public Access Channel is being used eighty (80) percent of the time between 4:00 P.M. and 11:00 P.M. for twelve (12) consecutive weeks, the Grantee shall, upon receipt of written notice from the City, make available new Channel(s) for the same purpose(s). Such requirement may be met by making available, on a part-time basis, one (1) or more unused access Channels until such time as such underutilized or unused Channels are needed for the uses to which they have been Dedicated.

(g) Whenever any access Channel required for Educational, Governmental, or Public Access programming is utilized less than four (4) hours per day for five (5) days per week for a continuous period of not less than twelve (12) weeks, the City may permit different or additional “interim” uses for said Channel. The Grantee may be permitted to utilize unused access channel capacity under rules and procedures established by the City; however, no access capacity shall be utilized by the Grantee until all other Channel capacity on the Cable System has been programmed. In the event that the City and the Grantee agree that the Grantee may utilize unused access Channel capacity, any revenues derived by the Grantee from the use of unused access Channel capacity shall be shared with the City and considered to be a portion of Gross Revenues which are subject to payment as Franchise Fees.

(h) Access Channels permitted by the City for “interim” use by a Grantee are to be restored to Educational, Governmental, or Public Access Channel use whenever the criteria in paragraph (e) of this section are exceeded by any one (1) of the existing access Channel uses or whenever the demand for use as demonstrated by records of each access Channel indicate that potential access Users are being turned away or that User produced programming is being rejected as a result of lack of Channel capacity available.

(i) Distribution of Government Produced Programming: In the event that there is more than one (1) Cable Operator providing Cable Service to the Franchise Area, or one (1) or more Multichannel Video Providers, the City shall not be precluded from providing or causing to be provided, programming produced by the City for any access programming Channel, such as a Government Access Channel and/or a Public Access Channel, to any Cable Operator or Multichannel Video Provider if such Cable Operator or Multichannel Video Provider provides a separate, direct link to the point of origination. Where a Grantee controls and supervises a Public, Educational, or Governmental Access Channel, the Grantee shall be exempt from the requirements of this Subsection.

(j) The content of programs on Public, Educational, and Governmental Access Channels shall not be controlled by the Grantee. In the event that a Grantee controls and supervises a Public Access Channel, the Grantee shall be exempt from the requirements of this Subsection.

(k) Financial and technical support and replacement and maintenance of equipment for access Channel facilities shall be separately incorporated into the Franchise by mutual agreement between the City and a Grantee.

(l) Interconnection. The Grantee shall, on request by the City, connect its Cable System within the City to any Cable System that is owned or operated by the Grantee or any affiliate or subsidiary of the Grantee in any contiguous municipality. The City also may request that the Grantee Interconnect its System with other communication facilities within or contiguous to the City. Such Interconnection shall be negotiated by the City and the Grantee. Upon receiving a request from the City to so Interconnect, the Grantee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among the Interconnecting parties for both construction and operation of the interconnection link. The

Grantee may be granted reasonable extensions of time to interconnect, or the City shall rescind its request to Interconnect, upon petition by the Grantee to the City, if the Grantee has negotiated in good faith and has arrived at impasse with the other Interconnecting party or Franchising Authority of the System to be Interconnected, or that the cost of the Interconnection would cause an unreasonable or unacceptable increase in Subscriber rates, or that the Interconnection is technically infeasible.

(m) A Grantee shall provide Leased Access Channel space or a portion of Channel space for leased programming consistent with the Cable Act and FCC regulations.

#### **Sec. 12.1-29. Review of substituted access channels or broad programming categories.**

The City Council, on behalf of Subscribers and potential Subscribers, shall have the right to review any substitution of Public, Educational, or Governmental access programming, or the substitution of any broad categories of video or other information programs that were committed by the Grantee in its proposal to the extent that such broad categories of video or other information programs are not being delivered. The City Council may order a change therein if it determines, after due hearing on notice, that this Ordinance or the Franchise Agreement has been violated if the substitution of any Public, Educational, or Governmental Access Channel has been made without the consent of the City Council, or if any broad categories of video or other information programs as specified herein are not being delivered. Any such order shall be issued only after a public hearing has been held; and written notice of such hearing shall have been provided to the Grantee and to the public at least thirty (30) days prior to such hearing. Any such order may be enforced by an appropriate action in the courts of Virginia or of the United States. A Grantee shall not, in relation to this Section, be deemed to have waived any right accorded to a Franchised Cable Operator arising under the First Amendment to the Constitution of the United States.

#### **Sec. 12.1-30. Emergency override.**

(a) The Grantee shall configure the Cable System to enable carriage of audio emergency override cable casting over all Channels of the Cable System in accordance with FCC regulations. Said emergency override capability shall be designed to allow the City Manager, or the City Manager's designee to activate the emergency override by touch-tone telephone, including cellular telephones or Personal Communications System (PCS) telephones, upon declaration of a public emergency.

(b) Upon requirement by the FCC to participate in the Emergency Alert System, Grantee shall provide the following:

1. A Channel alert system which provides Subscribers with appropriate audio and/or visual emergency warnings on all Channels operated by the Grantee at any given time.
2. An Emergency Alert System (EAS) or its successor, in accordance with all requirements of the FCC, including, but without limitation, the requirement currently set forth in FCC regulations that cable television systems transmit a visual EAS message on at least one (1) Channel and that cable television systems also provide video interruption and audio EAS messages on all Channels with the video further stating which Channel is carrying the visual message. In establishing its EAS system, the Grantee shall, in accordance with FCC or other applicable regulations, cooperate with the City on the use and operation by the City of the EAS.
3. In the event of emergencies which are not subject to the provisions of the EAS regulations established by the FCC (47 U.S.C. §11.53, §11.55) upon notification of said emergency by the City Manager or the City Manager's designee, the Grantee shall transmit a visual message on at

least one (1) Channel and provide video interruption and an audio message on all Channels with the video further stating which Channel is carrying the visual message.

4. A Grantee and the City shall jointly develop an emergency notification plan which shall be integrated into the City's disaster or emergency operations plan, and which plan shall be coordinated with emergency services agencies of Amherst County, Bedford County, and Campbell County.

#### **Sec. 12.1-31. Customer service standards.**

(a) A Grantee shall be subject to the following customer service standards consistent with 47 U.S.C. §76.309, 47 U.S.C. §1602, 47 U.S.C. §1603, 47 U.S.A. §1618, and 47 U.S.C. §1619:

1. A Grantee will maintain a local, toll-free, or collect telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.

a. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

b. After Normal Business Hours, the access line may be answered by a service or automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions as measured on a quarterly basis.

3. The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

4. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

5. Customer service centers and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

6. Installations, Outages, and Service Calls. Under Normal Operating Conditions, each of the following four standards will be met no less than 95 percent of the time as measured on a quarterly basis.

a. Standard Installations will be performed within seven business days after an order has been placed. "Standard" Installations are those that are within 125 feet of the existing distribution system.

b. Excluding conditions beyond the control of the Grantee, the Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.

c. The "appointment window" alternatives for Installations, Service Calls and other Installation activities will either be at a specific time or, at maximum, a four-hour time block during Normal

Business Hours. A Grantee may schedule Service Calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.

d. A Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary, at a time which is convenient for the customer.

#### 7. Communications between a Grantee and Subscribers.

a. Notification to Subscribers. A Grantee shall provide written information on each of the following areas at the time of Installation of service, at least annually to all Subscribers, and at any time upon request:

i. Products and services offered.

ii. Prices and options for programming services and conditions of subscription to programming and other services.

iii. Installation and service maintenance policies.

iv. Instructions on how to use the Cable Service.

v. Channel positions of programming carried on the system: and,

vi. Billing and complaint procedures, including the address and telephone number of the Franchising Authority's cable office.

b. Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Cable Operator. In addition, a Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (a)7.a. of this Section.

Notwithstanding any other provision of Part 76 of the FCC Cable Television Regulations, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, state, or franchising authority on the transaction between a Grantee and the Subscriber.

#### c. Billing.

i. Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

ii. In case of a billing dispute, a Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

d. Refunds. Refund checks will be issued promptly, but no later than either:

- i. The customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier, or
  - ii. The return of the equipment supplied by a Grantee if service is terminated.
- e. Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- (b) Nothing in this Section shall be construed to prevent or prohibit:
- 1. A Franchising Authority and a Grantee from agreeing to customer service standards that exceed the FCC customer service standards;
  - 2. The Franchising Authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
  - 3. The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the FCC customer service standards.

**Sec. 12.1-32. Consumer protection.**

- (a) In the event of a Service Interruption, the following standards for Subscriber credits shall be applied by the Grantee:
- 1. If a Subscriber experiences a Service Interruption totaling four (4) hours or more on one (1), two (2), or three (3) days in any calendar month, then the Grantee shall provide a credit to that Subscriber equal to one-thirtieth of one month's total fees paid by that Subscriber for each day on which such a Service Interruption occurs; provided, however, that such credit shall not apply to a Subscriber disconnected because of non-payment or excessive signal leakage. Such credit shall be provided by the Grantee automatically upon notice from that Subscriber of such Service Interruption, regardless of whether that Subscriber requests a credit.
  - 2. If a Subscriber experiences a Service Interruption totaling four (4) hours or more on four (4) or more days in any calendar month, then the Grantee shall provide a credit to that Subscriber equal to one (1) month's total fees paid by that Subscriber; provided, however, that such credit shall not apply to a Subscriber disconnected because of non-payment or excessive signal leakage. Such credit shall be provided by the Grantee automatically upon notice from that Subscriber of the fourth such Service Interruption, regardless of whether that Subscriber requests a credit.
- (b) A Grantee may impose a late, administrative or other fee on a customer for non-payment of a bill only in accordance with statutory provisions or judicial decisions.
- (c) A Grantee shall establish a repair service available on a twenty-four (24) hour, seven (7) day a week basis, capable of identifying, locating, and correcting major Cable System malfunctions in an expeditious manner. Said repair service shall be staffed with a workforce of skilled technicians and keep and maintain an inventory of maintenance and repair parts. Upon completion of a Service Call, Installation, or Installation-related activity, the Subscriber shall receive a notification of the Service Call.
- (d) The Grantee shall provide forty-eight (48) hours advance written or other notice to residents when performing scheduled system construction in the public easements, utility easements, or otherwise on the residents' private property. Said notice may utilize door hangers, letters, bill stuffers, or personal communications from a Grantee representative to a resident. Further, a

Grantee shall use its best efforts to notify residents when performing non-scheduled system construction, including unanticipated work associated with a Service Call or Service Interruption.

(e) Identification of customer service representatives and technicians:

1. Identification of telephone representatives: Upon telephone contact by a customer, customer service representatives of the Grantee shall identify themselves by first name. Technicians representing the Grantee or his contractors or subcontractors shall wear a company uniform, or display upon request, a bona fide company identification badge.

2. Identification of service representatives: Technicians of the Grantee and its contractors or subcontractors shall identify vehicles used for technical services with the name of the Grantee or contractor or subcontractor of the Grantee. Where practicable, vehicles belonging to the contractor or subcontractor shall also be identified with the Grantee's name located in a conspicuous place and manner. The type of identification need not be of a permanent nature.

(f) A Grantee shall issue the Subscriber a refund for any amount due to the Subscriber at the time of the termination of Cable Service. The Grantee shall refund the Subscriber in the form of a refund check. Refund checks shall be issued promptly, but no later than either the customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier, or the return of the equipment supplied by the Grantee if service is terminated.

(g) In the event that a Grantee leases accessory equipment for receiving Cable Service:

1. A Grantee may assess a reasonable deposit for the acquisition of Cable Service by a Subscriber, and for the rental of Converter box, remote control, and related equipment necessary for the reception or interdiction of Cable Service.

2. Upon the termination of service to any Subscriber, a Grantee shall promptly remove all of its equipment from the premises of such Subscriber upon Subscriber's request. Where the Subscriber has returned Converter boxes, remote control units, and related equipment in reasonable condition, deposits for said service and equipment shall be returned to the Subscriber within thirty (30) days of the date that the equipment supplied by the Grantee is returned.

(h) A Grantee shall adhere to the following Installation standards:

1. A Subscriber shall have the option to connect a standard Subscriber Drop to the Dwelling Unit by either:

a. Connection of the aerial drop to the Dwelling Unit at a minimum of twelve (12) feet above ground level; or

b. Attachment of the drop to the side of the utility pole and buried from the base of the utility pole to the Dwelling Unit.

(i) A Subscriber shall have the ability to disconnect service at any time at no charge. The Grantee shall cease charging for the Subscriber's service on the date that service is terminated.

(j) A Grantee shall be subject to the following Complaint procedures:

1. As Subscribers are connected or reconnected to the system, the Grantee shall, by appropriate means such as a card or brochure, furnish information concerning the procedures for making inquiries or Complaints, including the name, address and telephone number of the management



personnel of the Grantee's Cable System operations to whom such inquiries or Complaints are to be addressed.

2. When there have been similar Complaints made, or where there exists other evidence, which, in the judgment of the City Manager, in consultation with the Grantee, casts doubt on the reliability or quality of Cable Service, the City shall have the right and authority to require the Grantee to test, analyze and report on the performance of the system. The Grantee shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- a. The nature of the Complaint or problem that precipitated the special tests; and
- b. The system component(s) tested; and
- c. The equipment used and procedures employed in testing; and
- d. The method, if any, in which such Complaint or problem was resolved; and
- e. Any other information pertinent to the tests and analysis which may be required.

3. If, after receiving Grantee's report, and after the Grantee has completed any corrective action identified in the report, the City determines that reasonable evidence still exists of inadequate Cable System performance, then the City may enlist an independent engineer at Grantee's expense to perform tests and analysis directed toward such suspected failures to meet the requirements of this Ordinance. Grantee shall cooperate and permit such testing.

4. The City's right under this Section shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that complaints or other evidence requires that tests be performed to protect the public against substandard Cable Service.

(k) The Grantee shall keep a monthly service log which indicates the nature of each service Complaint received during the past twenty-four (24) months, the date and time each Complaint was received, the disposition of each Complaint, and the time and date thereof. This log shall be made available for the periodic and confidential inspection by representatives of the City Manager, or shall be sent to the City monthly upon request.

(l) The City's right under paragraph (j) shall be limited to requiring tests, analysis, and reports covering specific subjects and characteristics based on said Complaints or other evidence when and under such circumstances as the Council has reasonable grounds to believe that the Complaints or other evidence require that tests be performed.

(m) The City or other designated agent of the City shall have the authority to investigate Complaints tendered by Subscribers to the City.

(n) When the City or other designated agent of the City refers a Complaint from a Subscriber to a Grantee for resolution, a Grantee shall investigate such Complaint within two (2) working days from the date of a Grantee's receipt of such referral. A Grantee's investigation shall include contact to the Subscriber where possible, and a written response to the City, with a copy to the City's designated agent if the Complaint is referred from that source. At the discretion of the City, the referral may be sent to the Grantee in writing on a form to be provided by the City or other designated agent of the City. In such case, the resolution response shall be provided on the

form provided by the City or other designated agent of the City. Upon completion of investigation of an unresolved Subscriber Complaint, the City, in accordance with a Franchise Agreement, shall provide to a Grantee notice and an opportunity to cure any error, deficiency, or violation of the Franchise Agreement or this Ordinance found in the course of such investigation.

(o) If a Grantee's response to the Complaint is not satisfactory to the complainant, the complainant shall be referred to a Grantee's appropriate Cable System management personnel. Grantee's management shall make a good faith effort to reach resolution of the Complaint and shall notify the City and copy the designated agent of the City in writing of its effort to resolve the Complaint. If a Grantee's Cable System management cannot resolve the Complaint, a Grantee shall provide the name, address, and telephone number of the appropriate management personnel at the next level of operations.

(p) The Grantee shall provide a copy of the Customer Service Standards included in Section 12.1-31 to every Subscriber via a bill insert at least once every calendar year. The Grantee shall also provide a copy of the Customer Service Standards to every new customer within thirty (30) days of connection.

### **Sec. 12.1-33. Requests for service and temporary service drops.**

(a) Where a Person living within a newly annexed area of the City requests Installation of Cable Service, such Installation shall be performed within the terms of the line extension policy stated in Section 12.1-14(a)8.a.-c. hereinabove. A request for Cable Service shall be unreasonable for the purpose of this Subsection if no trunk line or node installation capable of servicing that Person's block has been installed.

(b) Temporary Service Drops:

1. The Grantee shall put forth every effort to bury temporary drops within fourteen (14) working days after placement between March 1 and December 1, weather permitting, unless the Grantee receives permission to delay burial. Temporary drops will be buried by the Grantee as expeditiously as possible, and in no event, will a drop which has been placed between November 15th of the prior year and March 1st of the current year be left unburied beyond May 1st of the same year. Any delays for any other reason than weather, ground conditions, street construction, or system redesign will be communicated to the City and copied to the Subscriber.

2. Upon request of the City the Grantee shall provide a monthly report to the City on the number of drops pending.

### **Sec. 12.1-34. Other petitions and applications.**

Upon request, copies of all petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission, to the Securities and Exchange Commission, or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations provided by the Cable System in the Franchise Area, and authorized pursuant to this Ordinance or the Franchise Agreement or received from such agencies shall be provided to the City within fourteen (14) working days of the City's request.

### **Sec. 12.1-35. Annual fiscal report.**

The Grantee shall file annually with the City Manager no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a financial report applicable to the Cable System serving the City, including a detailed income and expense statement applicable to its

operations during the preceding twelve (12) month period, a balance sheet, and a statement of its properties devoted to Cable System operations, by categories, giving its investment in such properties on the basis of original cost less applicable depreciation. Included in this report shall be the following information, specific to the City of Lynchburg: Number of homes passed; Number of cable plant miles; Number of Subscribers for each type of service offered and the Gross Revenues from all sources attributable to the operations of the Grantee from within the City. The financial report shall be certified as correct by a certified public accountant and there shall be submitted along with them such other reasonable information as the City Manager shall request.

Any proprietary information supplied shall remain confidential so long as it is consistent with the Freedom of Information Act or other comparable laws of the Commonwealth of Virginia.

#### **Sec. 12.1-36. Notice to the grantee.**

(a) All notices from the Grantee to the City pursuant to any Franchise shall be sent to the Office of the City Manager. The Grantee shall maintain with the City, throughout the term of the Franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating under this Ordinance.

(b) Where the Franchising Authority provides written notice to the Grantee regarding any matter concerning this Ordinance, any of the other ordinances of the City, or the Franchise Agreement, the Franchising Authority shall provide all such notices in writing with delivery by either of the following: Certified United States Mail, return receipt requested; By overnight delivery service for which written confirmation of delivery is received; or if the parties agree, by electronic facsimile transfer ("Fax").

Notice shall be deemed to have been given to the Grantee upon the date of transmittal, however, this shall not preclude the City from allowing the Grantee to act upon such notice, where action is applicable, within a specified time period starting from the date of receipt by the party to which the notice was sent.

(c) Except as provided in Section 12.1-43 regarding Performance Evaluation Sessions hereinbelow, the City shall not take any final action involving the evaluation, modification, renewal, revocation, or termination of the Grantee's Franchise unless the City Council has:

1. Called a public meeting for the purpose of taking such action as specified above;
2. Complied with the Public Notice provisions of the Code of Virginia; and
3. Advised the Grantee in writing by either certified United States Mail or delivery by hand, at least seven (7) days prior to such meeting as to its time, place, and purpose; and
4. The Grantee and any interested Person are given an opportunity to be heard at such meeting.

#### **Sec. 12.1-37. Public notice.**

Minimum public notice of any public meeting relating to the Franchise shall follow state statutory requirements and shall be on the Government Access Channel of the Cable System between the hours of 7:00 p.m. and 9:00 p.m., for five consecutive days prior to the meeting.

## **Sec. 12.1-38. Forfeiture and termination.**

(a) In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to terminate the Franchise and all rights and privileges of the Grantee hereunder in the event of a material breach of its terms and conditions. In interpreting this Chapter, material provisions shall include all labeled as such and all others which, under all the facts and circumstances indicated, are a significant provision of this Ordinance or the Franchise Agreement. A material breach by the Grantee shall include, but shall not be limited to the following:

1. Violation of any material provision of the Franchise or any material rule, order, regulation or determination of the City made pursuant to the Franchise;
2. Attempt to evade any material provision of the Franchise or practices any fraud or deceit upon the City or its Subscribers or customers;
3. Failure to complete initial construction or reconstruction, including upgrade, of a Cable System as specified in a Franchise Agreement;
4. Failure to provide the types of services promised; subject to the recourse that is available under Section 625 of the Cable Act (47 U.S.C. §545).
5. Failure to restore service after ninety-six (96) consecutive hours of interrupted service, provided the Grantee's failure to restore system-wide service is not caused by circumstances or events beyond the Grantee's reasonable control or except when approval of such interruption is obtained from the City;
6. Material fraud or misrepresentation of fact in the application for or negotiation of the Franchise.
7. Repeated failure, after notice and opportunity to cure, to comply with the material provisions of this Ordinance.
8. Repeated failure, after notice and opportunity to cure, to comply with the material terms of a Franchise Agreement.
9. Repeated failure to cure material violations of the Ordinance or a Franchise Agreement within a reasonable time after notice and opportunity to cure from the City.
10. Repeated failure to pay taxes, Franchise Fees, costs or penalties when and as due the City.
11. Failure to maintain required insurance coverage.
12. Insolvency or bankruptcy of the Grantee.
13. Transfer of the Franchise without City Council consent pursuant to Section 12.1-24 of this Ordinance
14. The Grantee abandons the Franchise. The Grantee shall be deemed to have abandoned its Franchise if it willfully refuses or is unable to operate the Cable System as granted by a Franchise Agreement pursuant to this Ordinance where there is no event beyond the Grantee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property.

15. The Grantee unreasonably refuses to provide Subscribers service insofar as their financial and other obligations to the Grantee are honored.

(b) The foregoing shall not constitute a material breach if the violation occurs but it is without fault of a Grantee or occurs as a result of circumstances beyond its reasonable control. The Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its shareholders, directors, officers, or employees.

(c) Written notice shall be given to the Grantee by the City Manager with a written demand setting forth:

1. The nature of the substantial breach or default by the Grantee;

2. A written demand that the Grantee correct the violation and come into compliance with any such provision, rules, order, or determination under or pursuant to this Chapter and the Franchise Agreement;

3. Notice that any failure to correct the remedy, the substantial breach, or default within thirty (30) days, or other such period as may be stipulated in a Franchise Agreement or as the parties may agree, without written proof that correction has been taken, or is being actively and expeditiously pursued, may be cause for termination of the Franchise and the City Manager may place the issue of termination of the Franchise before the City Council.

(d) The City Manager shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.

(e) Answer to notice of breach: Within thirty (30) days after the City's written notice to the Grantee, the Grantee shall respond in writing to the City, together with documentation in support of its response:

1. That it contests the City's notice of substantial breach and requests an opportunity to be heard as provided herein;

2. That corrective action has been implemented by the Grantee and the substantial breach or default has been cured;

3. That corrective action has been implemented by the Grantee and is being actively and diligently pursued in accordance with a written corrective action plan to be submitted to the City.

(f) Determination: The City Council shall determine, at a public meeting with Grantee having the opportunity to be present and heard, whether or not a material breach or default by the Grantee has occurred, whether it has been cured, or a satisfactory corrective action plan has been submitted and is being actively and diligently pursued and whether cause exists to revoke the Franchise or impose a lesser sanction.

(g) If the City Council shall determine the violation by a Grantee was the fault of the Grantee and within its reasonable control, the Council may, by Ordinance, declare that the Franchise of the Grantee shall be forfeited and terminated unless there is compliance within such reasonable period as the City Council may fix.

(h) The issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The Council may then terminate a

Franchise forthwith upon finding that the Grantee has failed to achieve compliance or may further extend the period in its discretion.

(i) Judicial Relief: No provision of this Section shall be deemed to delay, bar, or otherwise limit the right of the City to seek or obtain judicial relief to enforce the provisions of this Ordinance or a Franchise Agreement. In the event of any determination by the City to revoke or terminate a Franchise, to impose a forfeiture of a bond, letter of credit, or other security fund, or to impose a substantial financial penalty which would have a material adverse effect upon a Grantee, such a determination shall be stayed during the pendency of any judicial review thereof.

(j) In the event Grantee continues operation of all or any part of the Cable System beyond the revocation or expiration of the Franchise Agreement, Grantee shall pay to the City the compensation set forth in Section 12.1-27(a) hereinabove at the rate in effect at the time of such revocation or expiration, and in the manner set forth herein, together with any taxes it would have been required to pay had its operation been duly authorized in addition to any damages or other relief to which the City may be entitled in Section 12.1-40 hereinbelow.

#### **Sec. 12.1-39. City acquisition or removal of cable system.**

In the event that a Franchise has been revoked by the City and the City acquires ownership of the Cable System, or effects a transfer of ownership of the Cable System to another Person, any such acquisition or transfer shall be governed by Section 627 of the Cable Act (47 U.S.C. §547) or its successor provision.

#### **Sec. 12.1-40. Penalties.**

A Grantee shall comply with the requirements of this Ordinance and the Franchise Agreement at all times during the term of its Franchise. If the City has reason to believe that a Grantee has committed a certain violation of this Ordinance or the Franchise Agreement, the City may act to remedy the violation.

(a) Remedies retained. No provision of this Ordinance shall be deemed to bar or otherwise limit the right of the City to seek or obtain judicial relief by a court of the Commonwealth of Virginia or a federal court, from a violation of any provision of this Ordinance, a Franchise Agreement, or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages, except where liquidated damages are otherwise prescribed, for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy available contractually, at law, or in equity.

(b) Fine imposed: Unless otherwise provided, any Person convicted of violating any provision of this Ordinance or any rule or regulation promulgated hereunder shall, upon conviction, be subject to a fine not to exceed seven hundred fifty dollars (\$750.00) and costs for each offense. Each day of a continuing violation shall constitute a separate and distinct offense.

(c) Violation procedures:

1. Notice of violations: Written notice shall be given to a Grantee setting forth the nature of the violation and a reasonable period of time for a Grantee to correct the violation. Unless the City determined that the violation is of such a nature that a lesser period of time is warranted for remedying the violation, a Grantee shall be given thirty (30) days after receipt of such notice to remedy the violation.

2. Answer to notice of violations: Within thirty (30) days, or other such period of time specified by the City in its notice to a Grantee, a Grantee shall respond in writing to the City:

a. That it contests the City's notice of violation and requests an opportunity to be heard as provided herein. A Grantee shall submit supporting documentation with its response to the notice.

b. That it contests the City's notice of violation for the reasons that the violation was beyond the reasonable control of the Grantee and requests an opportunity to be heard as provided herein. A Grantee shall submit supporting documentation with its response to the notice.

c. That the Grantee will remedy the violation within the time specified by the City in its notice to the Grantee.

d. If a Grantee contends that an extended period of time is reasonably needed to remedy the violation, it shall submit a written request for an extension, together with supporting documentation that a Grantee cannot reasonably remedy the violation within the time specified by the City in its notice to a Grantee. The City shall not unreasonably deny an extension of time to remedy the violation. If the City grants the extension, a Grantee shall proceed to remedy the violation within the extended time period prescribed, provided that a Grantee also informs the City on a regular basis of the steps being taken to remedy the violation.

3. Opportunity to be heard: The City shall give a Grantee not less than twenty (20) days written notice of the date, time, and place of the public meeting to be held before the City Council. The Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. At the public meeting, the City Council shall hear and determine the issues and render its findings and decision.

4. Determination: If the Grantee fails to submit a written response to the City's notice of violation as provided in paragraph 2. hereinabove, or if a Grantee fails to remedy the violation within the time period specified by the City in its notice to a Grantee, or any extensions granted thereto by the City, or if the City Council is persuaded after a Grantee's opportunity to be heard in a public meeting that a Grantee has committed a violation as provided herein, the City Council may, after giving a Grantee an opportunity to be heard:

a. Order a Grantee to remedy the violation within a reasonable period of time specified by the City Council.

b. Assess liquidated damages against a Grantee in accordance with a Franchise Agreement and to exercise any other remedy provided in this Ordinance or the Franchise Agreement.

c. Impose any lesser sanction permitted by this Ordinance or a Franchise Agreement.

#### **Sec. 12.1-41. Liquidated damages.**

By acceptance of the Franchise granted by the City, a Grantee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this Chapter and the Franchise Agreement will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; the Franchise Agreement shall include provisions for liquidated damages to be paid by the Grantee in amounts set forth in the Franchise Agreement and chargeable to a security fund.

**Sec. 12.1-42. Continuity of service mandatory.**

(a) In the event of revocation of a Franchise, expiration of a Franchise, or transfer of a Franchise between the existing Grantee and a successor Grantee, the existing Grantee shall continue to provide Cable Service to its Subscribers for a reasonable period of time in the same manner and with the same types of programming, customer service, and repair capabilities under the same terms and conditions as provided by a Franchise Agreement and this Ordinance prior to the change in the status of the Franchise.

(b) If there is a change of Franchise, or if a new Cable Operator acquires the Cable System, the Grantee shall cooperate with the City, new Grantee and operator in maintaining continuity of service to all subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the system.

**Sec. 12.1-43. Performance evaluation sessions.**

(a) The City Council and the Grantee shall hold performance evaluation meetings within ninety (90) days of the third, fifth, seventh, tenth, and where applicable, twelfth, and fourteenth anniversary dates of the Grantee's award of the Franchise and at such other times as may be required by federal and state law or the terms of a Franchise Agreement. All such evaluation meetings shall be open to the public and transcribed. The City shall notify the Grantee, in writing, at least sixty (60) days in advance of each of the specified performance evaluation meetings. Notice to the public shall be in accordance with the provisions of the Code of Virginia.

(b) Special evaluation sessions may be held at any time during the term of the Franchise at the request of the City or the Grantee.

(c) All evaluation sessions shall be open to the public and announced by the City in a newspaper of general circulation in accordance with legal notice. The City shall notify its Subscribers of all evaluation meetings, including adjourned meetings, by announcements no less than three (3) times on the Government Access Channel between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each meeting.

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to: service rate structures; Franchise Fees, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Ordinance; judicial and FCC rulings; line extension policies; and Grantee or City ordinances or resolutions.

(e) During a review and evaluation by the City, the Grantee shall fully cooperate with the City and shall provide such information and documents as the City may request to reasonably perform its review.

(f) If at any time during its review, the City Council determines that reasonable evidence exists of inadequate Cable System performance, it may require the Grantee to perform tests and analysis directed toward the suspected inadequacies. The Grantee shall fully cooperate with the City in performing such testing and shall prepare results and a report if required within thirty (30) days after notice. Such report shall include that information as stated in Section 12.1-32(j)2.a.-e.. The Council may require the tests to be supervised by a professional engineer to be approved by the Council not on the staff of the Grantee. The engineer shall sign all records of special tests and forward to the Council such records with a report interpreting the results of the test and recommending action to be taken. The City's right under this Section shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable



grounds to believe that complaints or other evidence requires that tests be performed to protect the public against substandard Cable Service.

**Sec. 12.1-44. Contemporary technology.**

(a) Subsequent to each performance evaluation session, as set forth in Section 12.1-43, the City Council shall have the authority to order a public hearing on the provision of additional Channel capacity by the Grantee or the inclusion in the Grantee's Cable System of contemporary technology or upgraded facilities. Notice of such hearing shall be provided to the Grantee and the public not later than thirty (30) days prior to such hearing.

(b) If after such hearing, the City Council determines that:

1. There exists a reasonable need and demand for additional Channel capacity and/or contemporary technology or upgraded facilities, and

2. Provision has been made or can be made for reasonable rates which will allow the Grantee a fair rate of return on its investment (including the investment required to provide the additional Channels and/or the contemporary technology or upgraded facilities), taking into account the potential adverse impact of a rate increase on the Grantee's existing and potential Subscriber base, and

3. Will not result in economic waste for the Grantee, the City Council may order the Grantee to provide a specified number of additional Channels and/or contemporary technology (without regard to the type of technology) or upgraded facilities. In considering the economic feasibility of required Cable System improvements, the City Council may consider the proposed extension of the Franchise to permit the recovery of the cost of said improvements. Any proposed extension of the Franchise shall be treated procedurally in accordance with the procedure for Franchise renewal as set forth in Section 12.1-9(b). Without implying any limitations as to other provisions of this Chapter, this Section is deemed a material provision within the meaning of Section 12.1-38.

**Sec. 12.1-45. Rights reserved to the city.**

(a) The City hereby expressly reserves the following rights which shall not be deemed to be waived or abrogated by any Franchise granted pursuant to this Ordinance:

1. To exercise its governmental police powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City.

2. To adopt, in addition to the provisions contained herein, in any Franchise Agreement, and in any existing applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power. Any conflict between the provisions of a Franchise and any other present or future lawful exercise of the City's police powers affecting the public health, safety, and welfare, shall be resolved in favor of the latter.

3. To amend this Ordinance or any Franchise Agreement pursuant to Section 12.1-25 of this Ordinance, to require reasonable and appropriate modifications in a Grantee's Franchise Agreement of a nature that would not result in effectively terminating same; provided that the City Council shall not make any amendments or modifications to this Ordinance or a Franchise Agreement granted hereunder which would alter the provisions concerning Franchise renewal or revocation contained herein, or which would materially impact the terms and conditions of the Franchise Agreement to the detriment of the Grantee.

4. To renegotiate the terms of any Franchise granted pursuant to this Ordinance should section(s) of the Ordinance or Franchise Agreement be rendered void by the FCC, or by subsequent changes in applicable federal or state laws.

**Sec. 12.1-46. Rights of individuals.**

(a) The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income, gender, marital status, sexual preference or age. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

(b) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission, the Commonwealth of Virginia, the City of Lynchburg, and as such requirements may be amended from time to time.

**Sec. 12.1-47. Privacy.**

(a) In accordance with Section 631(a)(1) of the Cable Act (47 U.S.C. §551(a)(1)), a Grantee shall:

1. At the time of entering into an agreement to provide any Cable Service or other service to a Subscriber and at least once a year thereafter, provide notice in the form of a separate, written statement to such Subscriber which clearly and conspicuously informs the Subscriber of--

a. The nature of personally identifiable information collected or to be collected with respect to the Subscriber and the nature of the use of such information;

b. The nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of Persons to whom the disclosure may be made;

c. The period during which such information will be maintained by the Grantee;

d. The times and place at which the Subscriber may have access to such information;

e. The limitations provided by this Section with respect to the collection and disclosure of information by a Cable Operator and the right of the Subscriber to enforce such limitations.

(b) Each Grantee shall strictly observe and protect the right of privacy and of property of Subscribers and Users at all times in accordance with the provisions of Section 631(b-h) of the Cable Act (47 U.S.C. §551(b-h)) and the provisions of the Code of Virginia.

(c) A Grantee may release the number of its Subscribers but only as a total number and as a percentage of the potential Subscribers throughout the City. When indicating the number of Subscribers viewing a particular Channel at a particular time, the Grantee shall indicate only the total number of Subscribers viewing during the relevant time and the percentage of all Subscribers which they represent, but never the identity of a particular Subscriber.

(d) A Grantee may maintain such information as is necessary to bill Subscribers for the purchase of any Cable Service.

(e) A Subscriber may at any time revoke any authorization previously made by delivering to the Grantee in writing by United States Mail or otherwise his or her decision to so revoke. Any such revocation shall be effective upon receipt by the Grantee.

(f) A Grantee shall not tabulate any test results, nor permit the use of the Cable System for such tabulation which would reveal the commercial product preferences or opinions of individual Subscribers, members of their families, or their invitees, licensees, or employees without prior written authorization of the Subscriber.

(g) Each compilation, publication, tabulation, or other dissemination of each piece of information made or permitted to be made in violation of this Section shall be considered a separate violation.

#### **Sec. 12.1-48. Grantee rules and regulations.**

The Grantee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise, and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

#### **Sec. 12.1-49. Municipal rules and regulations.**

(a) In addition to the inherent powers of the City to regulate and control any cable television Franchise, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful police powers as referenced in Section 12.1-44 hereinabove, and furtherance of the terms and conditions of the Franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, any Franchise Agreement, or applicable state and federal laws, rules and regulations.

(b) The City may also adopt such regulations at the request of Grantee upon written application.

(c) In the course of the operation of its Franchise, a Grantee shall comply with all City of Lynchburg rules, regulations, or ordinances, whether currently in force, or upon subsequent adoption.

#### **Sec. 12.1-50. Force majeure.**

Whenever a period of time is provided for in the Franchise for either the City or the Grantee to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, strike, sabotage, unavoidable casualty or damage to personnel, materials or equipment, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefore, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond the Grantee's control" if committed, omitted, or caused by the Grantee, the Grantee's employees, officers, or agents or a subsidiary, affiliate, or parent of the Grantee, or by any corporation or other business entity that holds a controlling interest in the Grantee, whether held directly or indirectly. Further, the failure of the Grantee to obtain financing or to pay any money due from it to any Person, including the City, for whatever reason, shall not be an act or omission "beyond the Grantee's control." The failure of the Grantee to obtain necessary permits from applicable governmental or

utility agencies shall be deemed "beyond the Grantee's control" only if the Grantee has made a timely and complete request and application for said permit and is diligently pursuing the issuance of said permit.

**Sec. 12.1-51. Foreclosure.**

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Ordinance and a Franchise governing the consent of the City to such change in control of the Grantee shall apply.

**Sec. 12.1-52. Receivership.**

The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

- (a) Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and
- (b) Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Grantee.

**Sec. 12.1-53. Compliance with commonwealth and federal laws.**

(a) Notwithstanding any other provisions of the Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the Commonwealth of Virginia and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the Franchise or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Grantee shall notify the City of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or the Franchise.

(b) If the City determines that a material provision of this Ordinance is affected by any subsequent action of the Commonwealth of Virginia or the federal government, the City and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement in accordance with then applicable law.

**Sec. 12.1-54. Notice to comply.**

(a) Compliance periods: Unless otherwise stated in this Ordinance or a Franchise Agreement, the Grantee shall comply with the terms and conditions of the Ordinance or the Franchise Agreement with respect to compliance periods.

(b) Designation of agent for notification: A Grantee shall designate a Person within its management structure who shall have the authority to receive and respond to notifications sent by the Franchising Authority of Franchise violations, Subscriber complaints, or other concerns relating to the Franchise.

(c) Continuing obligation: subject to the provisions of this Ordinance, a Grantee shall not be relieved of its obligations to comply with any of the rules, regulations, or directives as stated in this Ordinance or the Franchise Agreement by reason of any failure of the City, or its officers, agents, or employees to enforce prompt compliance, nor shall such be considered a waiver thereof.

#### **Sec. 12.1-55. Service to multiple unit dwellings.**

(a) Neither the owner of any multiple unit residential dwelling under common ownership control or management of a planned unit development, or the agent or representative of either shall unreasonably interfere with the right of any tenant or lawful resident thereof to receive Cable Service, cable Installation or maintenance from a Grantee regulated by and lawfully operating under a valid and existing Franchise issued by the City, provided that such owner has received nominal just compensation resulting from the “taking” of any property arising out of this Chapter for which just compensation is due under the Constitution of the United States and the Commonwealth of Virginia.

(b) Neither the owner or any multiple unit residential dwelling or planned unit development or the agent or representative of either shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives Cable Service from a Grantee operating under a valid and existing Franchise issued by the City.

(c) Nothing in this Ordinance shall prohibit a Person from requiring that Cable System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of Persons or property.

(d) Nothing in this Ordinance shall prohibit a Person from requiring a Grantee to agree to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities.

#### **Sec. 12.1-56. Limits on grantee recourse.**

(a) To the extent that any laws immunize the City and its officials, boards, commissions, agents, or employees, a Grantee shall have no recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damages arising out of any provision or requirement of the Ordinance or the Franchise Agreement. A Grantee shall expressly acknowledge that upon accepting the right, privilege, and Franchise granted pursuant to the Ordinance, it does so relying upon its own investigation and understanding of the power and authority of the City. By the acceptance of a Franchise, a Grantee shall agree that it will not at any time set up against the City in any claim or proceeding, any provision, condition, or term of the Ordinance or the Franchise Agreement as unreasonable, arbitrary, or void or that the City had no authority to make such provision, term, or condition as part of or pursuant to the Ordinance, except as to those matters preempted by federal law or the laws of the Commonwealth of Virginia.

(b) Within a Franchise Agreement, a Grantee shall acknowledge that it has not been induced to accept a Franchise by any promise, verbal or written, by or on behalf of the City or by any third

Person regarding any term or condition of the Franchise not otherwise expressed herein. The Grantee shall further be deemed to warrant that no promise or inducement, oral or written, has been made to any City employee or official regarding receipt of the Franchise, other than as contained in the Franchise.

**Sec. 12.1-57. Rights and remedies..**

In the event of a violation or an alleged violation of the Franchise by the Grantee, the City, by suit, action, mandamus, or other proceeding, in law or in equity, may enforce or compel the performance of the terms of the Franchise to the full allowable extent. In the event of a judicial proceeding, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys fees, incurred in connection with such judicial proceeding.

**Sec. 12.1-58. Waiver.**

The City may, on its own motion or at the request of an applicant for a Franchise or a Grantee for good cause shown, waive any requirement of this Ordinance by resolution of the City Council.

**Sec. 12.1-59. Time is of the essence.**

Whenever any provision of this Ordinance or the Franchise Agreement shall set forth any time for any act to be performed by a Grantee, such time shall be deemed to be of the essence.

**Sec. 12.1-60. Savings clause.**

The express provisions of this Ordinance as it now exists will prevail over conflicting or inconsistent provisions of other municipal ordinances or conflicting or inconsistent provisions in a Franchise Agreement unless a Franchise Agreement expresses an explicit intent to waive or modify strict compliance with a requirement of this Ordinance; provided, however that no change in this Ordinance made by the City after the effective date of a Franchise Agreement shall amend the express provisions of a Franchise Agreement without an amendment to the Franchise Agreement. Neither party may take any unilateral action which materially changes the explicit performance promised in a Franchise Agreement unless modified or altered by a superior regulatory authority.

**Sec. 12.1-61. Repeal.**

Any ordinance or part of ordinance conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

**Sec. 12.1-62. Delegation of powers.**

Except for the powers of revocation and rate regulation, any right, power, or duty of the City Council of the City of Lynchburg, the agency or any official of the City, under this Ordinance may be transferred or delegated by ordinance, resolution, or other appropriate action of the City to an appropriate officer, employee, or department of the City, or any legal authority created for the purpose of regulating the operation and development of the Cable System.

**Sec. 12.1-63. Severability.**

The provisions of this Ordinance are severable, and if any provision or application is held to be illegal, unconstitutional, or invalid by a court of competent jurisdiction, such holding shall not affect the remaining provisions. It is the legislative intent of the City that the Ordinance would

have been adopted if such illegal provision had not been included or any illegal application would not have been made.

**Sec. 12.1-64. No waiver of rights bestowed by virtue of law.**

The City does not waive or release rights bestowed upon it by virtue of law or statute.

**Sec. 12.1-65. Governing law.**

This Ordinance shall be governed in accordance insofar as applicable with the laws of the Commonwealth of Virginia. Where federal jurisdiction applies, this Ordinance shall be governed by the applicable laws and agencies of the United States Government.

**Sec. 12.1-66. Acceptance and effective date.**

(a) No Franchise granted pursuant to the provisions of this Chapter shall be effective until executed by an authorized representative of the Grantee. In the event any of the things required in this Section are not done and completed in the time and manner required, the Council may declare the Franchise null and void.

(b) A Grantee shall file with the clerk of Council its written acceptance of the Franchise Agreement together with the certification of insurance, letter of credit, and construction and removal bonds required by Sections 12.1-21, 12.1-22, and 12.1-23, respectively, and Grantee's agreement to be bound by and comply with and to do all things required of it by the provisions of this Chapter. Such acceptance and agreement shall be acknowledged by the Grantee before a notary public and shall in form and content be satisfactory to and approved by the City Attorney.

(c) This ordinance shall become effective ten (10) days following its passage, approval, and publication in accordance with the requirements of law.

2. That this ordinance shall become effective upon its passage.

Adopted:

Certified: \_\_\_\_\_  
Clerk of Council

127L

## **EXECUTIVE SUMMARY CABLE TELEVISION ORDINANCE**

### **BACKGROUND**

It is proposed that the City's Cable Television (CATV) ordinance be completely replaced, reflecting changes in the regulatory environment and changes in technology and the industry.

### **SUMMARY OF SIGNIFICANT ORDINANCE CHANGES**

1. Both federal regulations and technology in general have changed significantly since the last ordinance revision, so several definitions of new terms have been added, including definitions for a "cable system", a "video provider", and many service-related terms.
2. A section has been added (Sec. 12.1-13) requiring quarterly reports on the franchisee's operations, including the number of connections, disconnections, outages, and calls received.
3. Sec. 12.1-14 states that CATV facilities must be underground in areas where both electric and telephone facilities are required to be underground. CATV can be above ground where either electric or telephone is above ground.
4. Sec. 12.1-19 now requires the delivery of a minimum of 90 channels. This is currently being met by the existing franchisee.
5. Concerning the use of the public right of way along streets (Sec. 12.1-20, Use of Streets), the franchisee is required to notify the City of all work before they begin. The proper maintenance of trees in the right of way has been a problem, so language has been added to give the City the right to supervise tree trimming or to do the trimming itself, at the expense of the franchisee. Also, the requirement for the franchisee to adhere to the excavation standards and procedures maintained by the Department of Public Works is now explicitly stated.
6. Language is included in Sec. 12.1-27 that clearly states that the franchisee is subject to the business license tax, should the City decide to assess this tax.
7. The right of the City to audit and inspect franchise fee calculations has been clarified in Sec. 12.1-27. Also added is the ability for the City to require payment for the audit from the franchisee if the franchise fees have been underpaid by more than four percent.
8. The categories of CATV programming services that are required to be carried are listed in Sec. 12.1-28. High-speed Internet service, i.e. cable modem, is listed with a qualification that it first must be classified as a CATV service. Recent federal rulings have indicated that this service will not be classified as a CATV service; however, this subject is still under debate.
9. Sec. 12.1-30 includes language requiring an audio emergency override of the CATV system to allow the broadcast of emergency messages, in accordance with Federal Communications Commission (FCC) regulations.
10. Customer service standards are delineated, as defined by the FCC, in Sec. 12.1-31 and 12.1-32. These standards require calls to be answered within 30 seconds 90% of the time, measured quarterly.
11. Sec. 12.1-40 allows for fines up to \$750/day to be assessed for any violation of the ordinance, including customer service standards. A violation procedure is defined in Sec. 12.1-40, including the right of the franchisee to be heard and to have the opportunity to cure any violations before a fine is assessed.





Stuart G. Chapman  
President

March 25, 2002

Mr. Michael Goetz, Director of Information Technology  
City of Lynchburg, Virginia  
863 Church Street  
Lynchburg, Virginia 24504

Dear Michael:

The City of Lynchburg has requested a description of the changes to its Cable Television Ordinance that have been addressed in the draft Ordinance which was sent to you today. Overall, the Ordinance has been modernized in order to address current states of technology, law, and regulation, as well as general practices used by cable operators and franchising authorities. A summary of the changes follows below:

**Definitions:** A number of new definitions were added. These include a definition of "Act" which incorporates the 1984 and 1992 Cable Acts along with the 1996 Telecommunications Act; A definition of "Cable System" which follows the 1996 Telecommunications Act; A definition of "Cable Operator" which also includes "Multichannel Video Operators", operators who serve apartment complexes or multiple dwelling units which piggyback their operations on phone lines or other telecommunications carriers; Several definitions related to customer service, which include definitions of "Complaint", "Normal Operating Conditions", "Normal Business Hours", "Service Interruption", "Outage" and "Service Call"; A definition of Gross Revenues which is more inclusive of revenues derived from cable service than the existing definition; and a definition of "Subscriber Drop" for the purpose of addressing unbundled cables. Most of the definitions found in the current Ordinance were retained.

**New Franchises:** This section has been modernized slightly to allow for new franchise applicants to include e-mail and website addresses. Also, the application fee has been raised to \$5,000.00 and the amount for recovery of expenses needed for the preparation and granting of the franchise not found in the current Ordinance has been included and capped at \$50,000.00. A requirement has been included which requires proposers to indicate if they have ever been investigated, indicted, or convicted. A process addressing questions offered by proposers has been added in Section 12.1-6(c).

**Grant of Authority:** A clause has been added stating that all franchises are non-exclusive.

**Records:** Sections regarding Service Availability and Record Request and a new Section on the Availability of Books and Records which expands upon existing language has been added in Section 12.1-13. The new section calls for quarterly provision of a service profile covering the Franchise Area (connections, disconnections, outages/interruptions, number of calls received), reports on temporary Subscriber Drops (Temporary drop burial requirements are found in Section 12.1-33), Complaint resolution data, and construction update reports.

**Cable System Construction:** Much of the existing language was retained. Extensions of plant are now subject to the 125-foot installation standard set by the FCC in 1992. A section on underground installation has been added (Section 12.1-14(b)).

**Permits:** A new section on plan review and permits has been added which builds upon existing requirements found in agreements with utilities. Language found in these agreements has been placed into the proposed ordinance in order to promote more standardization of requirements. As-built plans are required to be submitted, including those in CAD files.

**Construction and Technical Standards:** These standards have been merged into one Section (Sec. 12.1-18) and expanded to include compliance with NCTA cable system construction standards, the National Electrical Code, National Electrical Safety Code, and Bell System Code of Pole Line Construction (Verizon standards), along with FCC, USDOT, and OSHA standards. This section also requires standby power for the cable system, and licensing of contractors and subcontractors. Technical standards requirements follow those promulgated by the FCC (47 U.S.C. §76, Subpart K) and enforcement of the standards is tied to the ruling in FCC docket proceeding 99-57, released March 29, 1999 allowing and encouraging municipal enforcement of technical standards.

**Required Services and Facilities:** This section has been modernized to require a minimum of 90 channels without regard to method of delivery. FCC regulations prevent franchising authorities from specifying the method of channel delivery or transmission technology. Parental “lockout” controls and electronic status monitoring are required in this section.

**Use of Streets:** Much of the original language of the current Ordinance was retained. Clauses have been added to address emergency removal of facilities, and the location of pedestals and vaults. Tree trimming requirements have been added to this Section, including the ability of the City to supervise tree trimming activities or do the trimming itself at the expense of the cable operator. Removal of the cable system in the event of termination or revocation has been included in this section.

Mr. Michael Goetz

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**Indemnification and Insurance:** No major changes. Coverages have been raised to \$5,000,000 for bodily injury or death, property damage, and all other types of liability, insurers must be rated A- or better by Best's Insurance Rating Services, and a clause has been added for grantees who self-insure all or part of their coverage. Naming of city employees, officers, and agents as insureds on the insurance certificate has been clarified.

**Forms of Security:** Initial franchises will be required to post an irrevocable letter of credit of \$200,000, and a cash security deposit of \$10,000. Renewed franchisees must post a \$100,000 letter of credit and a cash security deposit of \$10,000. Requirements to replenish letters of credit or cash security deposits if either are drawn upon have been added.

**Construction Security:** Construction Bonds and Removal Bonds found in standard utility agreements have been carried over to this Ordinance.

**Transfers of Ownership or Control:** Language has been expanded in order to allow for the City to grant consent for transfers of control or ownership, or assignments. The 120-day review requirement found in the Cable Act has been added, along with the 30-day requirement for requesting additional FCC 394 Form information. Language requiring the transferee to comply with the terms and conditions of the franchise agreement has been added.

**Franchise Review and Modification:** This is a new section which follows Section 625 of the Cable Act (47 U.S.C. §545) regarding modification of franchise agreements.

**Rates and Fees:** Clauses requiring rate uniformity, non-discrimination, and the filing of rate schedules with the City have been added. Reservation of rights to regulate cable service has been clarified.

**Payment of Franchise Fees:** Original language from the current ordinance has been retained. Changes include a clarification of the right to audit and inspect franchise fees, assessment of costs of the audit or inspection if the grantee has underpaid franchise fees by more than 4 percent, the ability to charge interest of two points over the prime rate if underpayments are not made on time, and the filing of an annual statement of gross revenues and franchise fees in addition to quarterly filings. In addition, a process for increasing the percentage of franchise fees, if allowable by law, is included, which incorporates a public meeting for discussion of the increase.

**Cable Programming Services:** 13 categories of cable service have been added. At this time, high-speed Internet service is included as a category, however, a recent declaratory ruling that high-speed Internet access is an information service, and not a cable service, may lead the City to delete this requirement if it wishes to do so in advance of the final rulemaking process on this matter. Dedication of Public, Educational, and Government Access channels has been included and the existing language has been strengthened. In the event that a second cable provider serves Lynchburg, a section (12.1-28(i)) has been added allowing for distribution of Government produced programming to both cable providers.

**Emergency Override:** A new clause which sets procedures for providing emergency override of the cable system in the event of emergencies or disasters has been added. This clause also requires participation of cable operators in the Emergency Alert System (EAS) and joint development of an emergency notification plan between the City, the grantee, and Amherst, Bedford, and Campbell Counties.

**Customer Service Standards and Consumer Protection:** The customer service standards developed by the FCC in 1993 have been added. These address telephone answering times, availability of customer service representatives, repair service response and installation response standards, billing requirements, establishment of normal business hours for customer service centers operated by the grantee, telephone answering and service response under normal operating conditions defined for this section, a four-hour time block for appointment windows, required communications by the grantee to its subscribers, and a process for issuance of refund checks. A separate consumer protection section (Sec. 12.1-32) has been added in order to address specific concerns regarding credits for service interruptions, repair service requirements, advance notice to residents prior to scheduled system construction, identification of customer service representatives and technicians, return of deposits for accessory equipment (converter boxes, cable modems), installation standards, and complaint procedures.

**Notice to the Grantee and Public Notice:** Provisions for notice to the Grantee have been clarified and expanded to allow for faxes and overnight delivery service. Notice of public meetings concerning the Grantee has been described more fully. Public notice requirements under Virginia law are referenced along with notification of franchise evaluation sessions to be publicized over the Government Access Channel.

**Forfeiture and Termination:** Language has been added to describe material violations of the Ordinance or Franchise Agreement. Additional material violations for which forfeiture or termination may be applicable have been added (Sec. 12.1-38(a)6.-15.), along with a process for notice, opportunity to cure, and answer to breach have been added in order to provide for due process.

**Penalties:** The language in the current franchise regarding liquidated damages has been converted to an Ordinance penalty clause. Liquidated Damages (Sec. 12.1-41) are enabled in this Ordinance, however, they will be more fully described in the Franchise Agreement. The penalty process sets forth notice, answer, and opportunity to cure provisions, along with an opportunity to be heard. Again, this process is designed to preserve due process. Fines have been increased to \$750.00 per day per offense.

**Performance Evaluation Sessions:** Language from the current Ordinance has been expanded in order to allow cable system plant testing which may be supervised by a professional engineer.

**Contemporary Technology:** The nature of this clause, which, in the current Ordinance, is a “State-of-the-Art” clause, has been modified in order to address the ever-changing status of the “State-of-the-Art”. The concept of contemporary technology is used instead, since it suggests a wide variety of technological systems and media which may be used to improve the cable system and provide additional services, without conditioning any specific type of technology. Much of the original and current language has been retained.

**Rights:** Rights reserved to the City and to individuals have been placed in sequence. Section 12.1-45 (Rights Reserved to City) includes a specific statement allowing the City to exercise its police powers, and to have the power to pass additional regulations necessary in the exercise of its police powers affecting the health, safety, and welfare of the public.

**Privacy:** References to the grantee’s adherence to privacy provisions found in Section 631 of the Cable Act (47 U.S.C. §551) have been added.

**Compliance With Laws:** A statement requiring compliance with laws of the Commonwealth of Virginia and the federal government has been added.

**Notice to Comply:** Language regarding the grantee’s adherence to compliance periods has been added, along with the designation of an agent for notification and a clause requiring the grantee to comply with terms and conditions of the franchise even if the City has failed to enforce compliance.

**Prohibited Acts:** This clause supplants the “Violations” clause found in the current Ordinance. Section 12.1-56(a) is a modernization which includes a prohibition on theft of cable service through wiring or programming of computer hardware or software. Fines for violations in this Section have been raised to \$750.00 per day per occurrence.

Mr. Michael Goetz

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**Limits on Grantee Recourse:** This clause has been added in order to prevent the grantee from challenging the Ordinance or the Franchise Agreement or any of their terms, conditions, or provisions as being unreasonable, arbitrary, or void unless such terms, conditions, or provisions have been preempted by laws of the Commonwealth of Virginia or the federal government. This clause also adds a provision that a grantee must acknowledge in a franchise agreement that it was not induced to accept a franchise by any promise by the City or a third person, or that it made any promises or inducements regarding receipt of the franchise.

**Savings Clause:** Section 12.1-61 provides a "Savings Clause" which establishes the relationship between the Ordinance and the Franchise Agreement, and the prevalence of the Ordinance over the Franchise Agreement, unless otherwise provided for in the Agreement. This clause also prevents the indirect amendment of the Franchise Agreement by a change to the Ordinance without an amendment to the Agreement, and that no unilateral action may be taken to change the Agreement unless required by a superior authority.

**Delegation of Powers:** Section 12.1-63 allows the City Council to delegate its powers, duties, or rights under the Ordinance to any appropriate officer or employee or department of the City. An exception is made for the powers of revocation and rate regulation.

Should you have any questions regarding the changes to the Ordinance outlined in this letter, please contact me. In any event, I look forward to working with you and Walter Irwin on moving forward with the Ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Chapman", with a stylized flourish extending from the end.

Stuart Chapman

President